

IN THE CIRCUIT COURT OF  
THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,  
Plaintiffs,

vs.

CASE NO. 91-49738  
CA 22

PHILIP MORRIS COMPANIES,  
INC., et al.,  
Defendants.

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TRIAL

VOLUME 115

TRANSCRIPT OF PROCEEDINGS in the  
above-styled cause before the Honorable Robert Paul  
Kaye, at the Dade County Courthouse, 73 West Flagler  
Street, Miami, Florida, on Monday, September 22,  
1997, at 1:25 p.m.

APPEARANCES:

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SUSAN ROSENBLATT, ESQ.

On behalf of the Plaintiffs

HUGH R. WHITING, ESQ.

JONES DAY REAVIS & POGUE

On behalf of R.J. Reynolds

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GREENBERG TRAUIG HOFFMAN LIPOFF ROSEN & QUENTEL  
On behalf of Lorillard  
DAVID HARDY, ESQ.  
WALTER COFER, ESQ.  
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On behalf of R.J. Reynolds  
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4 WITNESS DIRECT CROSS REDIRECT DIRE  
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6 DIANNE IRENE LAXINETTA  
7 By Mr. Cofer: 14190 14247  
8 By Mr. Rosenblatt: 14220  
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10 JOLANDA JANCZEWSKI, Ph.D  
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1 (The following proceedings were had outside  
2 the presence of the jury:)

3 THE COURT: All right. Are you ready  
4 for the jury?

5 MR. COFER: Yes, Your Honor.

6 THE COURT: All right. Bring them in.  
7 We're ready.

8 (The jury entered the courtroom.)

9 THE COURT: All right. Folks, have a  
10 seat.

11 Ready to proceed?

12 MR. COFER: Yes, Your Honor. For our  
13 second witness, the defense calls Dianne Laxinetta.

14 Mrs. Laxinetta, take the witness stand up  
15 here.

16 Thereupon:

17 DIANNE IRENE LAXINETTA

18 Having been first duly sworn, was examined and  
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. COFER:

22 Q. Would you please state your full name and  
23 address for the record, please?

24 A. Yes. My name is Dianne Irene Laxinetta.

25 That's L-a-x-i-n-e-t-t-a. And I live at

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1 [DELETED].

2 Q. Mrs. Laxinetta, what do you do for a living?

3 A. I'm the owner and president of Customer  
4 Service Consulting.

5 Q. And what is that?

6 A. It's a management consulting firm where we  
7 work with large customer contact groups to improve  
8 their customer service, be it with people or  
9 environmentally.

10 Q. Could you, A, speak up and, B, tell the  
11 jury -- give them an idea of some of the projects  
12 that your company consults on?

13 A. Is this loud enough?

14 THE COURT: There's microphone right  
15 there, so get as close to it as you can.

16 MR. COFER: There's also water on the  
17 Judge's bench, if you'd like some.

18 THE WITNESS: Thank you very much.

19 A. I was hired by the City of Los Angeles to  
20 work at their four major airports to improve several  
21 of the customer contact groups at the four major  
22 airports.

23 BY MR. COFER:

24 Q. And how long did that take?

25 A. About two and a half years.

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1 Q. Mrs. Laxinetta, are you being compensated  
2 for the time that you spent consulting with me and  
3 preparing to testify in this case?

4 A. Yes, I am.

5 Q. Tell the jury what your standard hourly rate  
6 is?

7 A. I receive \$100 an hour.

8 Q. Mrs. Laxinetta, is your compensation in any  
9 way dependent on the outcome of that case?

10 A. No, it isn't.

11 Q. In other words, win, lose or draw you get  
12 paid; correct?

13 A. That's correct.

14 Q. Tell them approximately how many hours  
15 you've worked to date?

16 A. About 125 to 130.

17 Q. Could you tell the jury about your  
18 background in the airline industry after you  
19 graduated from the University of Southern  
20 California, please?

21 A. In March of 1970 I became a flight attendant  
22 with Pan American World Airways, and I was based at  
23 Miami and San Francisco, and I flew both primarily  
24 internationally, but domestic flights, as well.

25 Q. And then what did you do after you stopped

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1 being a flight attendant? What was your next job?

2 A. In December of 1972, I entered management  
3 for Pan American, and at this time, I started at the  
4 training academy. I was the supervisor of training  
5 and development there.

6 Q. How many flight attendants did you train,  
7 Mrs. Laxinetta?

8 A. That year we trained approximately 500  
9 flight attendants.

10 Q. And, generally speaking, what's involved in  
11 training flight attendants?

12 A. Flight attendant initial training is  
13 basically a four-and-a-half-week course. The first  
14 week flight attendants are introduced to policies  
15 and procedures and different aircraft types. The  
16 next week is spent in emergency equipment training,  
17 so that they can learn to handle any emergency  
18 situation for the safety of themselves and the  
19 passengers.

20 And, finally, the last two weeks is  
21 primarily spent in all of the service skills that  
22 they need to have: People skills, how to handle  
23 irregular situations, how to cook in all of the  
24 kitchen situations in all of the various aircraft  
25 types, and how to serve all of the various meals on

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1 all of the different aircrafts that they'll be  
2 flying on during their career.

3 Q. That takes us to December 1973 when you  
4 became supervisor of flight service personnel and  
5 departure controls for Pan Am based in New York.  
6 Tell the jury what that position involved.

7 A. In this position on a daily basis I was  
8 responsible to make sure that the flight attendants  
9 that flew from the Kennedy station had all of their  
10 equipment and materials and information that they  
11 needed in order to take that trip.

12 Q. And how many flight attendants did you  
13 supervise on a daily basis?

14 A. On a daily basis, we would see anywhere  
15 between 300 and 500 flight attendants.

16 Q. The next thing I have, Mrs. Laxinetta, is  
17 May of 1974, when you became supervisor of flight  
18 service administration for Pan Am based in Los  
19 Angeles. Tell the jury, if you would, what that  
20 involved.

21 A. At this flight service base, we had  
22 approximately 650 flight attendants, and I was  
23 responsible for all of the regular and nonregular  
24 payroll activity for the flight attendant group.

25 Q. Your next position was supervisor, departure

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1 controls, crew scheduling for Los Angeles, Honolulu  
2 from May of '76 to July of 1978. First, where were  
3 you based for that position?

4 A. I was stationed at Los Angeles.

5 Q. And what did that job entail?

6 A. Both Los Angeles and the Honolulu flight  
7 service bases had individual scheduling units, and  
8 each month when the flight attendants would get what  
9 we call our bid lines, which basically is a monthly  
10 schedule that's sent out to them that they need to  
11 choose their monthly schedule from, I would make  
12 sure that the bid lines went out on a timely basis  
13 and that when the bid lines were awarded to the  
14 flight attendants, that they were done accurately.

15 And in the event that a flight attendant  
16 felt that he or she had a problem with that system,  
17 I would meet with that individual flight attendant,  
18 their union representative and a local member of  
19 management to try to resolve the issue.

20 Q. Now, you moved to San Francisco in 1978 and  
21 served as manager of administrative controls and  
22 services. Tell the jury about that position.

23 A. At this flight service bay we had 750 flight  
24 attendants, and I was responsible for the personnel  
25 budget for all of the flight attendants who flew out

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1 of the San Francisco station.

2 Q. The next promotion I have is Honolulu,  
3 September 1979, director, inflight service. What  
4 does a director of inflight service do?

5 A. The director of inflight services is  
6 primarily responsible for the overall service  
7 product of all the flight attendants that fly  
8 aircraft out of that station and the flight  
9 attendants flew to such locations as Asia, South  
10 Pacific and what we call gateway U.S. cities.

11 Q. Mrs. Laxinetta, that brings us to Miami in  
12 September of 1981 where you were director of  
13 inflight service for the Miami and Houston bases for  
14 Pan Am; is that correct, ma'am?

15 A. That is correct.

16 Q. What did that involve?

17 A. It is similar to the previous position that  
18 I had in Honolulu, however, at this assignment I had  
19 1,800 flight attendants that I was responsible to  
20 train, counsel and discipline.

21 Q. Now, your next position was system director,  
22 inflight service, again based in Miami. Tell the  
23 jury about that position.

24 A. As system director of inflight service  
25 position, I was responsible for all of Pan Am's

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1 flight attendants, all 6,000 flight attendants for  
2 the overall service product on all of Pan American's  
3 aircraft, as well as the overall safety of the  
4 passengers and the crew.

5 Q. The next thing I have, Mrs. Laxinetta, is  
6 you were promoted to system director, passenger  
7 service administration and compliance for New York  
8 and Miami, from May 1984 until October of '85. Tell  
9 the jury about that job, if you would.

10 A. The senior vice president of passenger  
11 service and myself, we were responsible for  
12 developing, implementing and also monitoring all of  
13 the policies and procedures that the customer  
14 contact departments utilized in Pan American, such  
15 as reservations and sales, ground operations,  
16 inflight services, et cetera.

17 Q. And what was your final position with Pan  
18 American World Airways?

19 A. My final position was general manager of Los  
20 Angeles.

21 Q. And what did that involve on a day-to-day  
22 basis?

23 A. I was in charge of everything at the Los  
24 Angeles station, and the station was the fifth  
25 largest station in Pan Am's network of stations. I

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1 was responsible, basically, for most of everything  
2 that went on during the daily activity out of Los  
3 Angeles.

4 I was responsible for the ticket and office  
5 sales, which on an annual basis amounted to  
6 approximately \$200 million dollars worth of tickets  
7 being sold annually. I also was responsible for  
8 passenger check-in, baggage claim, VIP lounges,  
9 securities, maintenance, cargo and sales.

10 Q. Did your duties ever take you down on the  
11 tarmac?

12 A. Yes, they did.

13 Q. If I've added correctly, Mrs. Laxinetta,  
14 you've had over 18 years of experience in the  
15 airline industry, and for 14 of those years you  
16 specifically focused on training, supervising,  
17 managing and directing flight attendants in a  
18 variety of cities; is that correct, ma'am?

19 A. That is correct.

20 Q. How would you compare in terms of  
21 perspective you gain, your 16 years in management to  
22 your two years as a flight attendant, in terms of  
23 the knowledge you gained about flight attendant  
24 activities and schedules?

25 A. I think when you're in management, you get a

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1 much more involved and broader view of all of the  
2 things that flight attendants have to do on a daily  
3 basis and the policies and procedures that they work  
4 with.

5 Q. Let's talk about flight attendant staffing  
6 and schedules. Are all planes staffed with the same  
7 number of flight attendants?

8 A. No, they're not.

9 Q. What is it that determines how many flight  
10 attendants work on a specific plane?

11 A. Well, there's several things. The first  
12 thing would be the aircraft type itself. You have a  
13 narrow-bodied aircraft which has one aisle, and they  
14 require fewer flight attendants. And you have what  
15 we call our wide-bodied aircrafts, which have two  
16 aisles, and they have more flight attendants that  
17 are required.

18 Q. And is that because they accommodate more  
19 passengers?

20 A. Yes. The other thing is they do accommodate  
21 more passengers on the wide-bodied aircraft, and  
22 also another difference that would make whether you  
23 had fewer or more flight attendants is the actual  
24 service that you're giving on board.

25 Q. Does the service depend to any extent on the

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1 length of the flight?

2 A. Yes, it does.

3 Q. Are there some routes that you know are just  
4 going to be heavier in terms of passenger traffic?

5 A. Yes. Statistically we have those type of  
6 demographics, yes.

7 Q. And do you take that into consideration, as  
8 well, in terms of how you staff a plane?

9 A. Yes, we do.

10 Q. Now, how do flight attendants determine  
11 their specific schedule for a given month?

12 A. Well, if we're looking at the month of  
13 October, early in the month of September, each  
14 flight attendant would receive a huge packet of  
15 information at their house. And in this package,  
16 which we call a bid line package, which is nothing  
17 more than a monthly schedule package, there would be  
18 hundreds of lines from which flight attendants could  
19 choose their next month's schedule.

20 A line is nothing more really basically than  
21 a series of trips that go from their home base back  
22 to their home base again.

23 Q. Now, you mention bid process. Do the flight  
24 attendants then bid for the trips they want?

25 A. Well, they do. When you leave the flight

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1 academy, you are given a seniority number, which  
2 lives with you for the rest of your life when you're  
3 with an airline.

4 Q. Well, let me ask you this. So the flight  
5 attendants get the bid package, they fill it out,  
6 put in their bids, and then who determines which  
7 flight attendant actually gets what flights? For  
8 example, what if more than a few flight attendants  
9 want the same flights?

10 A. Seniority. The highest in seniority gets  
11 his or her first choice, and so on down the list.

12 Q. Well, then, how much then, Mrs. Laxinetta,  
13 control do flight attendants have over the schedules  
14 that they fly?

15 A. In the beginning, they have less control,  
16 but about -- in my experience in about two years, in  
17 most airlines, flight attendants, if they do their  
18 bid process wisely, can have fairly good control  
19 over their lives.

20 Q. What effect, if any, Mrs. Laxinetta, did the  
21 introduction and popularity of wide-bodied planes  
22 have on a flight attendant's ability to choose his  
23 or her own schedule?

24 A. Well, I really believe it helps flight  
25 attendants at an earlier stage of their career to

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1 get more of what they're seeking because there are  
2 more positions on the aircraft for them to choose  
3 from.

4 Q. How has seniority changed over the years?

5 A. In the '60s and '70s, for a combination of  
6 reasons, flight attendants did not stay as flight  
7 attendants as long as they appeared to do in the  
8 '80's and '90s. So the longer you stay in your  
9 profession as a flight attendant, the more seniority  
10 you accrue, the better your chances are to choose  
11 whatever schedules you might want.

12 Q. In the earlier years, if the flight  
13 attendants didn't, on the average, have as long a  
14 career, also the seniority would accumulate faster?

15 A. I'm sorry?

16 Q. In other words, if flight attendants only  
17 worked five years on an average, if you had been  
18 there three years, you were fairly senior, or four  
19 years, in the earlier years?

20 A. Well, I guess it could be, but in present  
21 day, what happens is that you keep accruing  
22 seniority, but you also have your new flight  
23 attendants coming in underneath you, which raises  
24 your seniority.

25 Q. Let me ask you this. Does everyone tend to

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1 bid the same flights?

2 A. No, they don't. Flight attendants are a  
3 very diverse group, and there are a lot of different  
4 things that people that fly want to do with their  
5 life. For instance, some people who have children,  
6 small children at home, want to be home with their  
7 children, so they bid what we call turn-around trips  
8 or short trips away from home. For instance, they  
9 jump on a flight in the morning from Miami to New  
10 York, and they're back that afternoon to be with  
11 their families.

12 There are other flight attendants that want,  
13 maybe, to visit some other destinations because they  
14 have friends or family there, so they bid those  
15 trips accordingly.

16 There are some people who would like to go  
17 to school, some people who would like to earn lots  
18 of money, so they bid very long, high-houred trips.  
19 So there are all sorts of different types of bid  
20 line selections.

21 Q. Thank you, Mrs. Laxinetta.

22 On the average, how many hours a month does  
23 a flight attendant work?

24 A. I would say there are two times a year, so I  
25 would have to divide that accordingly.

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1 Q. Okay.

2 A. In the slow season, when we in management  
3 looked back at how flight attendants flew and what  
4 the true hours were, somewhere between 67 and 69  
5 hours a month.

6 Q. Would the slow season generally be the  
7 winter months?

8 A. That is correct.

9 Q. How about in the summer months?

10 A. In the summer months it was somewhere  
11 between 70 and 73 hours per month.

12 Q. Let's just pick 70 hours a month, because  
13 that's a round number. It seems to be within the  
14 range. If a flight attendant works 70 hours a  
15 month, does that mean that he or she actually spends  
16 70 hours a month in the air flying?

17 A. No, it does not.

18 Q. Then what does the 70 hours refer to?

19 A. 70 hours basically refers to the  
20 block-to-block time.

21 Q. And tell the jury, if you would, what is  
22 block-to-block time?

23 A. When an airplane closes the door, when you  
24 close the door in an airplane and it's pushed away  
25 from the passenger ramp, that's when the clock

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1 starts, and that's the beginning of block time. The  
2 clock continues to tick on all of the way until you  
3 reach your next destination and you pull back up to  
4 the passenger ramp, and that is then when  
5 block-to-block time ends.

6 Q. So does the block-to-block time include any  
7 time spent taxing or any delays on the runway?

8 A. Oh, yes, it does.

9 Q. Now, are there circumstances,  
10 Mrs. Laxinetta, where a flight attendant gets credit  
11 for hours that she doesn't actually work?

12 A. Yes. In most of the flight attendant  
13 contracts, there are provisos known as soft time, so  
14 that when a flight attendant, for instance in the  
15 Pan Am contract, when a flight attendant leaves his  
16 or her home base -- for every five hours that he or  
17 she is away until they come back to their home  
18 people, they earn one hour of flight time credit.

19 For instance, if a flight attendant would be  
20 called out to fly a Los Angeles-San Francisco trip,  
21 which is approximately an hour and ten minute  
22 block-to-block time, they fly to San Francisco, they  
23 overnight and they take the afternoon San  
24 Francisco-Los Angeles trip back down.

25 To complete this pattern, they would have

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1 flown approximately two hours and 20 minutes of  
2 block-to-block, but because they were away, let's  
3 say, 20 hours from their home base, they actually  
4 earned four hours of flight time credit. And per  
5 the contract, whatever is largest is what their  
6 awarded.

7 Q. Just so we're clear, 70 hours a month time  
8 worked does not equal time in the air?

9 A. That's correct.

10 Q. And it's block-to-block?

11 A. Yes.

12 Q. And then there may be circumstances where a  
13 flight attendant will get credit for the  
14 block-to-block time where he or she isn't even  
15 actually on the plane?

16 A. Yes.

17 Q. Now, let's talk specifically about what  
18 flight attendants do on the plane.

19 First, how is it determined where a flight  
20 attendant will work on the plane?

21 A. Some airlines during their monthly bid  
22 process actually have the flight attendant not only  
23 bid their monthly schedule but actually bid on a  
24 specific flight where they would like to work.

25 Other airlines bid -- I mean, other airlines, when

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1 the flight attendants show up for briefing, they  
2 volunteer for a position or they're assigned to a  
3 position.

4 Q. Mrs. Laxinetta, when smoking was permitted  
5 on planes, could a flight attendant choose not to  
6 work in the smoking section?

7 A. No, she could not.

8 Q. Were flight attendants allowed to smoke on  
9 planes?

10 A. Yes, they are.

11 Q. When and where?

12 A. Flight attendants are allowed to smoke after  
13 the major meal services are over with, and they can  
14 smoke in a jump seat, which is in a smoking section  
15 on the aircraft, or in a galley location that is  
16 also in a smoking section.

17 Q. So when smoking was permitted on planes, was  
18 there any incentive for flight attendants who smoked  
19 to work the smoking sections?

20 A. Yes. I would say yes.

21 Q. Because?

22 A. Because they could have a cigarette and not  
23 be on a break. If you were assigned to a section  
24 where, let's say your jump seat was in a no-smoking  
25 section, even though the major meal service was

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1 over, you're still on duty and you would have to  
2 wait for the lead flight attendant to relieve you to  
3 take a break before you could go to a smoking area  
4 and have a cigarette.

5 So if you sat in a smoking section in a jump  
6 seat, you could have that even while you were on  
7 duty.

8 Q. And again, these questions all address when  
9 smoking was permitted on domestic flights.

10 A. Right.

11 Q. Was smoking permitted when the plane was at  
12 the gate?

13 A. No.

14 Q. When would the pilot turn off the no-smoking  
15 sign?

16 A. The general rule of thumb is that once the  
17 airplane takes off and reaches the 10,000 foot  
18 level, the no-smoking sign would go off.

19 Q. So it's not permitted at the gate. How  
20 about while the plane is taxiing?

21 A. No.

22 Q. Are there times after the no-smoking sign is  
23 turned off and people are permitted to smoke, are  
24 there other times when the no-smoking sign is turned  
25 on when the plane is in flight?

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1       A.    Yes.  Whenever the aircraft would hit  
2   turbulence, if the pilot turns on the no-smoking  
3   sign, then the passengers would put out their  
4   cigarettes and the flight attendants are asked to  
5   take their jump seats.

6       Q.    How about when the plane is preparing to  
7   land, at what point does the pilot turn on the  
8   no-smoking sign?

9       A.    It's usually at the 10 or 15-minute point  
10   where you're once again going through the 10,000  
11   foot level.

12      Q.    So smoking is permitted on a plane when?

13      A.    It's permitted when the no-smoking sign goes  
14   off, after you've taken off, and it is permitted all  
15   of the way to landing, just before final descent at  
16   the 10,000 foot level, but it is not permitted  
17   during the no-smoking sign in turbulence.

18      Q.    Mrs. Laxinetta, when are flight attendants  
19   permitted to get up, move about the plane and start  
20   their duties?

21      A.    It varies, but basically once again, the  
22   rule of thumb is when the aircraft is climbing and  
23   has hit a more level part of that climb, so that it  
24   is easier for them to remove the equipment.

25      Q.    Have you brought with you a diagram of a

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1 Boeing 727?

2 A. Yes, I have.

3 Q. And does this fairly and accurately depict a  
4 727?

5 A. I can't see it.

6 THE COURT: You can step down.

7 MR. COFER: Actually step down.

8 BY MR. COFER:

9 Q. Will this assist you in describing the  
10 activity patterns, what flight attendants do when  
11 they're on a plane?

12 A. Yes. Yes, it does.

13 Can everyone see okay?

14 Q. First, before you start, let me ask you  
15 this. Are all 727s set up exactly like this, or are  
16 there variations in terms of jump seats, galleys and  
17 what have you?

18 A. No. Not all 727s are set up like this.  
19 Each airline has their own configuration, and, in  
20 fact, even within a specific airline, we have  
21 different configurations on the same type of  
22 aircraft.

23 Q. If you would, please tell the jury what  
24 they're looking at.

25 A. Okay. This is the front of the aircraft,

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1 and this is the tail of the aircraft.

2 The key over here, basically the blue  
3 represents the flight attendant jump seats, and the  
4 jump seats are where the flight attendants sit for  
5 takeoff and landing or at any time when they're  
6 resting during the flight.

7 MR. COFER: Excuse me a moment.

8 Your Honor, would you like me to move this  
9 so you can see it?

10 THE COURT: No. Just turn it a little  
11 bit towards me just once so I can see what you're  
12 looking at, and then you can turn it back.

13 Okay.

14 MR. COFER: I'm sorry.

15 A. That's okay.

16 So as I was saying, the blue represents the  
17 jump seats you have two in front of the aircraft and  
18 two in the aft of the aircraft. You also --

19 Q. Go ahead.

20 A. The red represents the galley or the kitchen  
21 areas. This is your first-class kitchen area. This  
22 is your economy kitchen area.

23 The orange represents the lavatories. This  
24 would be your first-class lavatory, and you have two  
25 economy lavatories in the rear end of the aircraft.

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1 Q. Now, you told us that the number of flight  
2 attendants who work on a plane varies depending on  
3 the length of the flight and the size of the plane.  
4 Do the services provided by the flight attendants  
5 vary depending upon the length of the flight?

6 A. Yes, they do.

7 Q. Is there a minimum flight time for providing  
8 beverages?

9 A. The rule of thumb generally is 55 minutes of  
10 flight time for beverages and an hour and 30 for a  
11 snack service. And that's not a full meal service.  
12 That's just a snack service.

13 Q. Now, does that mean when you're on a plane  
14 that's less than 55 minutes you can't get a drink?

15 A. No. It doesn't mean that. You can have  
16 drinks on request.

17 Q. Now, when you were a flight attendant in the  
18 early '70s, Mrs. Laxinetta, were there dedicated  
19 smoking sections on the plane, or was smoking  
20 permitted anywhere?

21 A. No. When I was a flight attendant, smokers  
22 were randomly disbursed throughout the aircraft.

23 Q. When were smoking sections put in on planes?

24 A. 1973.

25 Q. You have two flight attendants, you say, in

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1 first class and two in economy?

2 A. Yes. Two in first class and two working in  
3 economy.

4 Q. The ones working in economy, do they work  
5 the entire length of the economy section, or are  
6 they assigned specific zones?

7 A. No. They would work the entire length of  
8 the economy section.

9 Q. Would you tell the jury on a flight, let's  
10 say a flight from Miami to New York, what the flight  
11 attendants would do on a 727?

12 A. Okay. The same would be true for first  
13 class. I'd like to concentrate on economy because  
14 of the numbers of passengers.

15 The flight attendants, after it was fairly  
16 level, would go to the back galley, kitchen area,  
17 and they would get out their carts and they would --  
18 one would station his or her cart right here  
19 (indicating); another one would station their cart  
20 approximately midway through the cabin. And they  
21 would start moving towards the back of the aircraft  
22 serving beverages and soft drinks to the passengers.

23 Q. Okay. What would they do next?

24 A. After the beverage service was completed,  
25 they would stow their carts back into the kitchen.

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1 They would then pull out their other carts, and they  
2 would do the same thing, position them approximately  
3 in the same locations, and they would start handing  
4 out trays with the choice of entrees that the  
5 passengers wanted, and they would move back here.

6 At some point during the time when they are  
7 passing out trays to the economy passengers, one of  
8 the first-class flight attendants would break off  
9 and start the beverage service of the coffee, tea,  
10 soft drinks.

11 Q. Now, when smoking sections were put on 727s  
12 after 1973, where in the plane were they located?

13 A. In the back of the aircrafts in this section  
14 (indicating). For instance, economy would be in  
15 this area, and first class would be in the last  
16 rows.

17 Q. Now, this is a narrow-bodied plane. When  
18 did wide-bodied planes become popular?

19 A. In the 1970s.

20 Q. Have you also brought a diagram of a  
21 wide-bodied plane?

22 A. I did.

23 Q. It's a Boeing 747. And why did you choose a  
24 747?

25 A. Because I think that it's a fair

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1 representation of a wide-bodied aircraft that's  
2 still in use, and it could illustrate well the  
3 services.

4 Q. And does this diagram fairly and accurately  
5 depict a 747?

6 A. It does.

7 Q. And do you believe it would assist the jury  
8 in your description of their services and activity  
9 levels?

10 A. Yes.

11 Q. Again, does this mean every 747 was set up  
12 exactly like this, or were there some variations?

13 A. No. As I said, with the 727, even within  
14 the airline itself, there were various different  
15 configurations. Numerous different.

16 Q. If you would, please, just describe  
17 generally for the jury the Boeing 747 cabin  
18 configuration.

19 A. Okay. Once again, this is the front of the  
20 aircraft, and this is the back of the aircraft.

21 On this aircraft, we have three different  
22 classes of service. We have A zone, which is first  
23 class, we have the B zone, which is business class,  
24 and we have C, D and E zone, which are all economy  
25 class services.

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1           Zone L represents the upper lobe dome that's  
2 above first class, which is also business.

3           The blue, once again, designates jump seats  
4 for the flight attendants. We have several more on  
5 this aircraft. You can see at each of the ten door  
6 locations, there are five on each side, you will see  
7 the blue designations.

8           The red, once again, represents the kitchen  
9 areas. This is your first-class kitchen, your  
10 business kitchen and your largest kitchen of all,  
11 which is in the back of the aircraft, middle of D  
12 and E, which is your economy kitchen.

13          And once again, the orange represents the  
14 lavatory area. This is your lavatory in the upper  
15 lounge. You have lavatories for business in first  
16 class located here, lavatories for economy here and  
17 also at the end of the aircraft.

18          Additionally, we have highlighted the  
19 smoking seats by having a heavier blue line. So  
20 your smoking seats on this aircraft, this row in  
21 first class, these two in business and these rows in  
22 the economy section.

23          Q. Now, let's assume again, Mrs. Laxinetta,  
24 that we have a flight, approximately a three-hour  
25 flight from Miami to New York, how many flight

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1 attendants would typically work the Boeing 747 on  
2 that flight?

3 A. 13 flight attendants.

4 Q. And would you tell the jury where each of  
5 the flight attendants would work?

6 A. Okay. You would have three flight  
7 attendants working first class. You would have  
8 three flight attendants for business, but one would  
9 be dedicated solely to the upper lounge and probably  
10 would not be coming down except for maybe a few  
11 tools and equipment.

12 So you would have two working this business  
13 area. You would have the remaining seven working  
14 economy. The six would work all of the passenger  
15 areas and one for your kitchen area.

16 Q. Now, I want to ask you about that. You told  
17 us on the 727 that a flight attendant who worked in  
18 economy worked the entire length of the economy  
19 class?

20 A. That's correct.

21 Q. Is it also true here, or are the flight  
22 attendants assigned to specific zones?

23 A. No. They're assigned what we call the  
24 dedicated areas. And in this particular case, two  
25 flight attendants would be assigned to zone C, two

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1 would be assigned to zone D and two to E.

2 Q. Now, is it correct that the only smoking  
3 that's permitted in the economy section of this  
4 plane is in the back of zone E?

5 A. That is correct.

6 Q. Is there any business reason for a flight  
7 attendant who's assigned to zone C to leave zone C  
8 and go back and work in the smoking section of zone  
9 E?

10 A. No. The closest they would get to it would  
11 be to go to this aft galley to pull out their carts.

12 Q. Is there any business reason that a flight  
13 attendant assigned to zone D would go back or have  
14 to go back to the smoking section in zone E?

15 A. No. The same is true.

16 Q. Who determined where the smoking sections  
17 were located?

18 A. The company did, the airlines.

19 Q. You may return to your seat, if you'd like,  
20 Mrs. Laxinetta. Thank you.

21 I have just a few more questions.

22 In your experience, Mrs. Laxinetta, both as  
23 a flight attendant and as a person with the various  
24 positions, management positions you held, is it  
25 common for a flight attendant to ever have to run or

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1 walk rapidly down an aisle to attend to the needs of  
2 passengers?

3 A. I've never seen it myself, and we actually  
4 train them during the emergency equipment training  
5 portion of their initial training not to run or to  
6 walk quickly because this tends to make the  
7 passengers become concerned and frightened because  
8 there might be an incident on board, an emergency.

9 Q. Who determined how many seats were devoted  
10 to the smoking sections on specific planes?

11 A. The airline.

12 Q. Now, Mrs. Laxinetta, you told the jury about  
13 your experience with Pan Am with respect to your  
14 testimony today in terms of bidding in terms of the  
15 activity patterns. Is that also true of the other  
16 airlines, the other major carriers in this country?

17 A. Yes, it is.

18 Q. And how do you know that?

19 A. Well, in the various positions that I held  
20 during the 14 years in inflight services, in most of  
21 them I was required as a part of my job to go out  
22 and to fly our competitors to make sure that our  
23 food and service product was as good, if not better,  
24 than theirs.

25 And most specifically, when I was the system

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1 director of inflight services, I was the one for the  
2 company that designated specific services to be  
3 placed on board, so I needed to be absolutely sure  
4 that when I said that we would have this service,  
5 that it was as good or better than our competitors,  
6 so I flew them to make sure that it was.

7 MR. COFER: Mrs. Laxinetta, thank you  
8 very much. That's all I have at this time.

9 THE COURT: Cross, please.

10 CROSS EXAMINATION

11 BY MR. ROSENBLATT:

12 Q. 25 years ago, for two years, you were a  
13 flight attendant?

14 A. That is correct.

15 Q. And after those two years, you were  
16 management?

17 A. Uh-huh. Yes.

18 Q. And the rest of your career in the airline  
19 industry, you were management?

20 A. Yes.

21 Q. Okay. And for a lot of those years, you  
22 were focused in on flight attendants and the  
23 problems of flight attendants and what they did, how  
24 they bid, those kind of things; correct?

25 A. Well, that was part of my job, but not all

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1 of my job.

2 Q. You obviously know a lot about flight  
3 attendants.

4 A. Yes, I do.

5 Q. And as I've heard your testimony today, it  
6 would seem to me that you basically would have been  
7 able to answer all of the questions you were asked  
8 by Mr. Cofer just based on your experience, without  
9 opening a book, without studying anything; isn't  
10 that correct?

11 A. Well, I was away from Pan Am American for a  
12 few years, so I did open a few books to refresh my  
13 memory.

14 Q. Well, what took 130 hours? In other words,  
15 the questions you were asked today, you were a  
16 flight attendant two years, then you were in  
17 management, constantly dealing with flight  
18 attendants. I'd like to have some understanding of  
19 what took you 130 hours to give the testimony that  
20 you gave today.

21 A. Okay. Well, several of those hours were  
22 spent in reviewing the Pan Am and the national  
23 contracts and the inflight service handbook and some  
24 of the other related documents that are on the list  
25 so that I would be sure that what I testified to

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1 today here was correct and accurate.

2 There also were meetings that I had with  
3 some of the attorneys and a project that I did for  
4 them, and that accounts for the 130 hours.

5 Q. As I sat here listening to your testimony,  
6 listening to the questions, listening to the  
7 answers, and correct me if I'm wrong, the bottom  
8 line of your testimony seems to be, being a flight  
9 attendant is not a very tough job?

10 MR. COFER: I'll object to that.

11 BY MR. ROSENBLATT:

12 Q. Not a very hard job; correct?

13 MR. COFER: I'll object to that, Your  
14 Honor. It's for the jury to determine what the  
15 testimony was.

16 THE COURT: But it's under cross  
17 examination. Overruled.

18 A. I don't think it's a very strenuous job, no.

19 BY MR. ROSENBLATT:

20 Q. Okay. Let's talk about a few things, a few  
21 responsibilities that a flight attendant has.

22 Now, some of the planes that the flight  
23 attendants work on can seat up to 450 people; right?

24 A. Such as the 747 that we used, yes.

25 Q. That's a mini-city, 450 people.

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1 A. Yes.

2 Q. And on that airplane with 450 people or 300  
3 people or whatever, there's no police department,  
4 there's no fire department. If somebody gets drunk  
5 and unruly and there's a ruckus, that becomes the  
6 flight attendant's problem; right?

7 A. And then the pilot's problem, yes.

8 Q. Well, the pilot's main function is to fly  
9 the plane. Essentially that's the flight  
10 attendant's problem; isn't it?

11 A. If it gets out of control and the flight  
12 attendant is unable to contain it, then, no, then it  
13 goes to the pilot.

14 Q. All right. But part of the training that  
15 flight attendants have is obviously they should have  
16 the wherewithal and the experience and the judgment  
17 to be able to solve the problems so that they don't  
18 bother the guy who's flying the plane and is  
19 responsible for the lives of the 450 people?

20 A. I agree with you.

21 Q. Okay. Now, every flight that I've ever  
22 taken in the seat, in front of me, in the pocket  
23 there's a little bag.

24 A. A little?

25 Q. A little bag.

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1 A. Oh, okay.

2 Q. And we both know what that bag is for. If  
3 somebody gets air sick and they have to throw up,  
4 they throw up in the bag. And if they do, who do  
5 they give the bag to? Not the pilot?

6 A. The flight attendant.

7 Q. The flight attendant. Okay.

8 People come on a plane, whether it's at 7:00  
9 a.m. in the morning or 7:00 p.m. at night, neither  
10 the airline, nor the pilot, nor the flight  
11 attendants have any idea what they've been doing for  
12 the six or eight hours before they got on the plane;  
13 correct?

14 A. Correct.

15 Q. For all you know, people can come on a  
16 plane, as long as they got a ticket, they could be  
17 on drugs, they could have taken a bunch of drinks,  
18 they could be half drunk or all of the way drunk;  
19 right?

20 A. Correct.

21 Q. And if that happens, and if people act  
22 bizarre and get into fights or get into arguments,  
23 that's the flight attendant's problem?

24 A. But that's also why we train them during the  
25 training programs, how to handle these particular

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1 situations to the very best of their abilities.

2 Q. If a smoker is sitting in a nonsmoking seat  
3 and decides that he wants to smoke, it's the flight  
4 attendant's job to tell him he can't smoke?

5 A. That's correct.

6 Q. And if he's nasty or belligerent or abusive,  
7 the flight attendant has got to deal with that?

8 A. That is correct.

9 Q. And sometimes people become nasty and  
10 abusive and insulting; is that correct?

11 A. That is correct. And we also, during  
12 training, try to help them handle those situations  
13 to keep it from escalating.

14 Q. And there's no age limit on the people that  
15 can come on a plane. Newborn infants can come on a  
16 plane; correct?

17 A. That's correct.

18 Q. And people 100 years old can come on a  
19 plane; correct?

20 A. Yes.

21 Q. And people with disabilities can come on a  
22 plane?

23 A. Yes.

24 Q. If a paraplegic in a wheelchair needs help  
25 or an elderly person or a child, the flight

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1 attendant has got to deal with that; right?

2 A. Well, if you have a passenger that's totally  
3 incapacitated, I believe they have to have someone  
4 traveling with them who can handle them in the event  
5 of an emergency situation. We do have handicapped  
6 people that come on board, but they must be able to  
7 get out, you know, by themselves.

8 Q. I believe you described yourself as a  
9 consultant.

10 A. Yes.

11 Q. Okay. And how long have you been a  
12 consultant?

13 A. Since 1989.

14 Q. That's when you left --

15 A. I left Pan American in 1988 and became  
16 married and enjoyed being married and then started  
17 my company, I think, early in 1989.

18 Q. What kind of cases do you consult on with  
19 the company that you're president of?

20 A. As I mentioned, I worked for two and a half  
21 years for the City of Los Angeles working on their  
22 airports to improve various customer departments  
23 that we, the passengers, believe the airlines are  
24 responsible for, but instead the City really  
25 provides those services, such as parking garages,

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1 cleanliness of the terminals, VIP lounges, things of  
2 that nature.

3 I've also worked for a media corporation, as  
4 well.

5 Q. What did you do for the media corporation?

6 A. They were expanding, and I went in to help  
7 them expand, in recruiting and training and  
8 completely updating their personnel policy manuals  
9 to reflect all of the laws of California for that  
10 particular time, for a company of its size.

11 Q. Have you ever been involved in a situation  
12 where you've given testimony for a private party  
13 about what flight attendants do or don't do?

14 A. No.

15 Q. Do you know how it was you were picked, out  
16 of all of the former flight attendants in America,  
17 how you were picked? Do you know how that decision  
18 came about?

19 A. Well, I think the decision came about  
20 because I was one of the few people that's out there  
21 right now who did run a large inflight services  
22 department and is not associated with an airline,  
23 and also because a former individual knew me, knew  
24 my name and called me.

25 Q. And that former individual is a lawyer named

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1 Barry Davidson, who represents Philip Morris, and he  
2 practices in Miami, and he was the first contact  
3 that you had about being a witness in this case;  
4 correct?

5 A. That's correct.

6 Q. And you've known him about 25 years, because  
7 he was a lawyer when you were testifying in a case  
8 years ago for Pan Am?

9 A. Probably about 15 years ago.

10 Q. And in that case about 15 years ago where  
11 you testified, you were testifying strictly as a  
12 fact witness, on fact?

13 A. I believe so, yes. I don't remember  
14 the terms. I believe so.

15 Q. You don't remember the circumstances?

16 A. I remember the circumstances of the trial,  
17 but I don't remember whether it was a fact -- I  
18 assume so, not being involved in this process too  
19 often.

20 Q. Now, when you were in management at Pan Am  
21 and there would be lawsuits or arbitrations filed by  
22 flight attendants, you would be involved in those  
23 disputes on the side of management; correct?

24 A. I would be involved if they had what were  
25 called system implications, such as maternity

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1 leaves, industrial issues, anything that might be a  
2 part of our contract that might change something in  
3 the contract, so I would become involved. And, yes,  
4 on behalf of the company.

5 Q. Never on behalf of the flight attendant?

6 A. No.

7 Q. Now, when you were a flight attendant -- and  
8 what years were those, '71, '72?

9 A. '72. December of '72, so almost three  
10 years.

11 Q. Now, in those days, they didn't have carts?

12 A. They had carts, but not meal carts. They  
13 had what we called were beverage carts. They also  
14 had carts that we placed food on that we would serve  
15 in first class or business class to passengers.

16 Q. So when you were a flight attendant, when it  
17 came to meal service, the set-up was that a flight  
18 attendant would physically take two trays, one in  
19 each hand, walk to the very front of the plane, hand  
20 out the two trays to a couple of passengers, go all  
21 of the way back to the opposite end of the plane,  
22 get two more trays, go back to the front, give them  
23 to two more passengers until that was accomplished,  
24 until everyone on the plane got their food?

25 A. Yes. They did that numerous times.

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1 Q. Okay. And sometimes people got impatient;  
2 they wanted food; right?

3 A. That's the nature of people.

4 Q. They want food?

5 A. I agree.

6 Q. Not everybody is polite and sweet?

7 A. No.

8 Q. And sometimes the flight attendants had to  
9 hustle; she doesn't want a hassle from somebody  
10 who's hungry?

11 A. Well, I don't know what you mean by  
12 "hustle."

13 Q. Move fast, not just take the two trays and  
14 go like this, but like this, zip, so the person in  
15 row two is not going to yell at her or act  
16 unpleasant. You've seen that happen?

17 A. No, I haven't.

18 Q. Everyone on your flights were just sweet and  
19 easy to get along with?

20 A. Well, we've had some bad situations on our  
21 flights, both when I was a flight attendant and when  
22 I would be a supervisor or director. I mean, people  
23 are not perfect. But hopefully we have recruited  
24 the kind of people that have the people skills that  
25 in most of the instances can handle it well for the

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1 passenger and for themselves.

2 Q. People skills meaning?

3 A. The ability to deal well with people, not  
4 only --

5 Q. Smile?

6 A. -- in good situations. No, in bad  
7 situations. To turn lemons into lemonade.

8 Q. That's part of the training of flight  
9 attendants, to turn lemons into lemonade?

10 A. Yes. To try to take an angry person, to  
11 make them happy and make them feel good about their  
12 experience and not to sit there and fume.

13 Q. And sometimes, in order to accomplish that,  
14 flight attendants have got to hustle, move quickly?

15 A. You keep going back to that. They may want  
16 to help them out by giving them a tray right then  
17 and there and then go back and help out some other  
18 passengers in the order. I mean, that's their  
19 judgment call. That's why we put them on board. We  
20 trust their judgment.

21 Q. And when you were a flight attendant, in  
22 addition to the meals, there would be a drink  
23 service?

24 A. Yes. That's correct.

25 Q. And there was no limit, then, when you were

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1 a flight attendant on the number of drinks a  
2 passenger could have; is that correct?

3 A. The rule of thumb was they could have as  
4 much as they wanted to until they appeared to be  
5 intoxicated, in which case we would stop serving  
6 them.

7 Q. So if somebody held their liquor well and  
8 they were quiet and they weren't acting  
9 obstreperous, they could have 15 drinks,  
10 theoretically?

11 A. I suppose that could happen, but I think if  
12 you had somebody you were serving 15 drinks to, I  
13 think a red flag in most flight attendants' eyes  
14 would appear, and they would start watering the  
15 drinks down is what they used to do.

16 Q. There was no limit on drinks then; there's  
17 no limit on drinks now?

18 A. To my knowledge, that's correct.

19 Q. When you were a flight attendant, you were a  
20 smoker?

21 A. Yes.

22 Q. And you smoked on airplanes?

23 A. Yes.

24 Q. You quit smoking about ten years ago because  
25 you wanted to have a healthier lifestyle; correct?

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1 A. Yes.

2 Q. Now, the airplanes that you were familiar  
3 with, the seating capacity was anywhere from about  
4 375 to 450; correct?

5 A. On the 747s, yes. But I also flew  
6 narrow-bodied aircraft, too, in answer to your  
7 question.

8 Q. Now, back in the days when you were a flight  
9 attendant, you were allowed to smoke even if  
10 nonsmokers were in the galleys?

11 A. Well, could you be a little bit more  
12 specific for me? What aircraft are we talking  
13 about, because that would make a difference in the  
14 answer of my question.

15 Q. Well, any aircraft in which there were  
16 galleys and you felt like smoking, as I understood  
17 it, you had the right to smoke.

18 A. Yes. We did have the right to smoke.

19 Q. I mean, even if there was a flight attendant  
20 who was a nonsmoker and didn't particularly like  
21 your smoke?

22 A. Right.

23 Q. You still had the right to smoke?

24 A. Yes. But -- okay.

25 Q. Do you want to continue?

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1       A.   No.  It's okay.  I was thinking of the 707  
2       which I flew on, the front galley was not near a  
3       passenger area.

4       Q.   There's no doubt in your mind when you  
5       worked as a flight attendant, on every flight, you  
6       inhaled, inhaled the smoke of passengers; correct?

7       A.   The smoke of passengers, their cigarette  
8       smoke?

9       Q.   Yes.

10      A.   Oh, I'm sure I did.

11      Q.   It was unavoidable; right?

12      A.   Right.

13      Q.   Now, when you were a flight attendant, I  
14      believe that was before the time they instituted  
15      sections, smoking and nonsmoking?

16      A.   That's correct.

17      Q.   So when you were a flight attendant, anybody  
18      who was a flight attendant, up until the time that  
19      rule went into effect, obviously the whole airplane  
20      was a smoking flight?

21      A.   Yes.

22      Q.   When you were a flight attendant, how many  
23      carry-ons were passengers allowed to take on the  
24      plane with them?

25      A.   I really don't recall.

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1 Q. When you left Pan Am, what was the general  
2 rule in the industry on that, in terms of carry-ons?

3 A. Two bags.

4 Q. And the rule was that the bags had to be  
5 stored either in the overhead bin above the seat or  
6 under the seat; correct?

7 A. Correct.

8 Q. And obviously there would be situations  
9 where a passenger either unknowingly or knowingly  
10 would bring on a bag that was larger than was  
11 permissible, and if that happened, that was another  
12 situation that the flight attendants had to deal  
13 with?

14 A. That's correct.

15 Q. And if people came on with carry-ons and  
16 because of their physical condition or their age or  
17 whatever, they needed help, the flight attendants  
18 would help?

19 A. Yes.

20 Q. That was their job?

21 A. Yes.

22 Q. And it was also their job to make sure that  
23 the rule was complied with, that all the carry-ons  
24 were either in the overhead bin or under the seat?

25 A. That's correct.

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1 Q. It was your experience, was it not, that at  
2 least on some of the flights when you were a flight  
3 attendant, at least half the people were smoking?

4 A. I could not conjecture about that.

5 Q. Well, you did on your deposition; didn't  
6 you?

7 A. I don't believe so.

8 Q. You assumed it was true.

9 A. Could you please --

10 Q. Yes. I'll go right to the page. Page 94,  
11 Line 2 on Page 94.

12 MR. COFER: Well, let's start,  
13 counsel --

14 MR. ROSENBLATT: I'll start wherever  
15 you want me to start.

16 MR. COFER: Okay. Let's start on Page  
17 93, Line 24, please.

18 MR. ROSENBLATT: Well, let me start at  
19 Line 18 on Page 93.

20 Q. "Question: But generally on those six-hour  
21 flights when smoking was allowed, there was a  
22 significant amount of smoking going on; correct?

23 "Answer: There was smoking going on, yes.

24 Umm-humm. But what percentage was smokers, I don't  
25 know.

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1           "Question: It was somewhere around half the  
2 people smoking; wasn't it?  
3           "Answer: I don't know.  
4           "Question: Sometimes it was at least half  
5 the people smoking; wasn't it?  
6           "Answer: I'm sure that is true.  
7           "Question: A lot of smoke; correct"?  
8           And your answer is: "A lot of smoke."  
9           Is that correct?  
10          A. Uh-huh.  
11          Q. Okay. I understand you didn't count them,  
12 but from your two-and-a-half-years experience as a  
13 flight attendant where there was not a nonsmoking  
14 section, it seemed to you that up to half of the  
15 plane might have been smoking, and in any event,  
16 there was sure a lot of smoke around?  
17          A. Well, as I said, there were times that it  
18 most likely could have been half, but not always.  
19 It could have been less, too.  
20          Q. Sure. Now, you've even had the experience  
21 where sometimes flight attendants would go to the  
22 cockpit and ask the pilot if they could put the  
23 oxygen mask over their face. You've seen that  
24 happen?  
25          A. Yes. I've done it myself.

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1 Q. You don't know anything about ventilation  
2 systems?

3 A. I do not.

4 Q. You don't know anything about secondhand  
5 smoke?

6 A. I do not.

7 Q. If you had been told when you were smoking  
8 on airplanes, this is a hypothetical question, if  
9 you had been told when you were a smoker and you  
10 smoked on airplanes that a Surgeon General of the  
11 United States had concluded that secondhand smoke  
12 could cause lung cancer and other diseases in  
13 healthy, nonsmokers, you wouldn't have smoked; would  
14 you?

15 MR. COFER: Hang on just a second.  
16 Objection, Your Honor. Beyond the scope. She  
17 testified about activity patterns.

18 THE COURT: Yes. I think that issue is  
19 beyond the scope.

20 MR. COFER: Thank you.

21 THE COURT: Sustained.

22 BY MR. ROSENBLATT:

23 Q. Let's talk about some of the flight  
24 attendant duties in general, some of the training  
25 they go through.

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1           Part of the job of a flight attendant is to  
2   conduct a pre-flight cabin emergency equipment  
3   check-in and make sure passengers are in their  
4   assigned seats?

5       A.   Right. Those are two separate activities,  
6   though.

7       Q.   Now, if it turns out that a passenger brings  
8   on a bag that's too large, does it sometimes happen  
9   that the bag has to be removed from the aircraft  
10  altogether?

11      A.   Yes. Some airlines have people actually at  
12   the cabin door, the passenger service  
13   representatives, who will take the bag before they  
14   get on board. But that doesn't happen all of the  
15   time, and some airlines don't have the people there,  
16   and then it becomes the flight attendant's job to  
17   apologize to the passenger and to bring the bag  
18   forward and have it tagged and put below.

19      Q.   The flight attendants are responsible for  
20   placing the doors in an arrival and departure mode,  
21   as appropriate?

22      A.   That's correct.

23      Q.   If there's a quarrel or dispute about  
24   seating on a airplane, that's the flight attendant's  
25   responsibility, to try to work that out in as nice

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1 and friendly a basis as possible?

2 A. Well, actually in most airlines, it's the  
3 passenger service agents. If they're still at the  
4 gate, an agent has to come, and they're called to  
5 resolve the situation. If it happens when they're  
6 way from the gate and the door is closed, then the  
7 flight attendant will get involved with that from  
8 time to time.

9 Q. If people want newspapers or magazines or  
10 pillows or blankets, there's that call button where  
11 they can -- they have the option of calling the  
12 flight attendant, and the flight attendant will do  
13 what he or she can to accommodate that request?

14 A. That's correct, but in most cases they've  
15 put the pillows and blankets out before the  
16 passengers even get on board the aircraft.

17 Q. Are wheelchairs allowed on airplanes?

18 A. They have a specific wheelchair that has  
19 been designed for the airplanes. The passenger  
20 wheelchair is put in the belly of the aircraft, and  
21 then they are placed in a much more narrow  
22 wheelchair that will go through the isles.

23 Q. Do people come on with canes, with walkers?

24 A. Yes, they do.

25 Q. Flight attendants are trained, that if

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1 someone has a heart attack or someone becomes  
2 seriously ill, to deal with that?

3 A. Yes. Uh-huh.

4 Q. Basically the flight attendant has got to be  
5 prepared to deal with every conceivable emergency,  
6 because you're faced with a situation where these  
7 300 or 400 people are total strangers, you know  
8 nothing about them, you know nothing about their  
9 background and you've got to deal with a lot of  
10 possibilities?

11 A. Yes. That's true. Because from time to  
12 time, these situations do occur.

13 Q. Pregnant woman in their ninth month are  
14 allowed on planes?

15 A. They're not supposed to be.

16 Q. But who really checks?

17 A. They do slip by occasionally, yes.

18 Q. You would agree that many flight attendants  
19 in the history of air travel have been seriously  
20 injured, lost their lives and performed heroically?

21 A. Many flight attendants?

22 Q. Yes.

23 A. No, I would not agree with that. I think we  
24 have lost some very good flight attendants in  
25 accidents and incidents, but to characterize it as

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1 many flight attendants, I would not agree with that.

2 Q. Well, let's take out the word many, but  
3 obviously in plane crashes, you would agree that  
4 many times flight attendants have acted heroically  
5 and lost their lives?

6 A. Yes. And passengers, as well.

7 Q. How many employees do you have in Customer  
8 Service Consulting?

9 A. None. It's just my company.

10 Q. Just you?

11 A. Just me, myself and I.

12 Q. So the \$13,000 you've made for your work in  
13 this case you don't have to share with anybody?

14 A. No. It's mine. In other projects, I've  
15 brought in independent contractors, if they're  
16 required for that specific contract.

17 Q. What have you understood your role to be in  
18 this case?

19 A. My role basically is to be able to explain  
20 what a flight attendant does on board an aircraft,  
21 to be able to explain how they select their monthly  
22 schedules, the different types of monthly schedules  
23 that they can choose from because of the different  
24 needs and desires amongst the group, and that's  
25 basically what I'm here to do.

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1 Q. If one of the issues that the jury is being  
2 called upon to determine in this case is whether  
3 secondhand smoke causes disease, you would agree  
4 you're of no assistance on that; are you?

5 MR. COFER: Your Honor, she's not a  
6 medical doctor, and we didn't offer her as a medical  
7 doctor.

8 THE COURT: She's not offered for that  
9 purpose.

10 MR. COFER: Pardon?

11 THE COURT: She's not being offered for  
12 that purpose.

13 MR. COFER: No. She's merely being  
14 offered for what she's testified to.

15 MR. ROSENBLATT: I'm merely asking for  
16 what purpose she's being offered.

17 MR. COFER: I think you asked her.

18 THE COURT: You asked the question.  
19 She answered the question. And I think we'll move  
20 on.

21 BY MR. ROSENBLATT:

22 Q. Okay. Basically to describe to this jury  
23 what flight attendants do?

24 A. Right.

25 Q. And on a flight, whether it's from Miami to

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1 New York or from Miami to Los Angeles, a flight  
2 attendant can't be guaranteed that he or she will  
3 have any rest period; it all depends on the  
4 circumstances of the flight?

5 A. That's true. But in a normal flight  
6 situation, 99.9 percent of the time, they will get a  
7 rest time.

8 Q. 99.9 percent of the time?

9 A. Well, for sure Miami-Los Angeles.

10 Q. Did you ever fly Miami-Los Angeles when you  
11 were a flight attendant?

12 A. Yes. When it was a feeder flight, yes, I  
13 did.

14 Q. And since you started Customer Service  
15 Consulting, this is the first and only time you've  
16 ever been asked to give testimony about flight  
17 attendants?

18 A. No. I was asked once before, when I was  
19 assistant director, inflight services, when I was  
20 working for Pan Am and in charge of the flight  
21 attendants. I mentioned that earlier, the case that  
22 I was involved in.

23 Q. The case about 15 years ago?

24 A. That's correct.

25 Q. That's when you were with Pan American?

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1 A. Pan Am.

2 Q. But I asked you since you began.

3 A. I'm sorry.

4 Q. I guess you began this in 1989.

5 A. I'm sorry. I misheard the question. I  
6 apologize.

7 Q. That's all right.

8 From 1989 to 1997, the only time you've been  
9 asked to give testimony in a case concerning your  
10 knowledge about flight attendants is this case?

11 A. Yes.

12 Q. And you were asked to do that by a lawyer  
13 representing Philip Morris who you knew from that  
14 earlier case 15 years ago?

15 A. Correct.

16 Q. During the 130 hours, thereabouts, that  
17 you've spent working on this case, did you read any  
18 of the various flight attendant depositions?

19 A. Yes, I did.

20 Q. Did you read all of them?

21 A. I think I did.

22 Q. Did you make notes of them?

23 A. Did I make notes on them?

24 Q. Yes, as you read them.

25 A. Yes. On the outside of them, yes.

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1 Q. But you don't know what kind of aircraft  
2 they flew on; you don't have any recollection of  
3 that?

4 A. Well, I do. Some flew DC-10s. Some flew  
5 747s, 767s, 757s. I believe some even referred  
6 earlier to 727s, because they were a varied group in  
7 terms of seniority there. So some flew new  
8 generation, and some flew older generation.

9 Q. Then having given that answer, would you  
10 explain to me why you gave this answer on Page 66.

11 MR. COFER: Wait. Wait. Hang on a  
12 second.

13 MR. ROSENBLATT: Line 9.

14 THE WITNESS: Okay.

15 MR. COFER: Do you have a copy of the  
16 deposition for the witness?

17 MR. ROSENBLATT: No.

18 THE COURT: All right. What was the  
19 question that you asked?

20 BY MR. ROSENBLATT:

21 Q. The question asked of you on Page 66, Line  
22 89: "What type of aircraft did the flight  
23 attendants in the Broin case work on?"

24 "Answer: I don't know."

25 A. And that was correct at that time because I

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1 read the depositions after I gave my deposition.

2 Q. Aha. After you gave your deposition. And  
3 you gave your deposition after this trial had  
4 started, June 17th?

5 A. Yes. We tried to schedule it several times,  
6 but it fell apart.

7 MR. ROSENBLATT: That's all I have.

8 MR. COFER: I have just a couple,  
9 Mrs. Laxinetta.

10 REDIRECT EXAMINATION

11 BY MR. COFER:

12 Q. Tell the jury why some flight attendants  
13 would go into the cockpit and put the oxygen mask  
14 on?

15 A. In my experience, flight attendants would,  
16 on occasion, go into the cockpit to put the oxygen  
17 mask on because they were tired, and the oxygen,  
18 they felt, would innervate them.

19 MR. ROSENBLATT: Objection, Your Honor.  
20 This is obviously speculation.

21 MR. COFER: No. It's in the  
22 deposition, counsel.

23 THE COURT: I don't care if it's in the  
24 deposition or not, it might still be speculation.

25 The point is of her own experience, not just what

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1 she anticipates or suspects.

2 MR. ROSENBLATT: How would she know?

3 BY MR. COFER:

4 Q. Well, based on your own experience --

5 THE COURT: Her experience, yes.

6 BY MR. COFER:

7 Q. Based on your experience flying for two and  
8 a half years as a flight attendant, supervising  
9 literally thousands of flight attendants on flights  
10 all over the world, tell the jury why flight  
11 attendants would go in the cockpit and breathe  
12 oxygen from the oxygen masks?

13 MR. ROSENBLATT: Objection. If she  
14 wants to testify about why she got oxygen, no  
15 objection.

16 THE COURT: Sustained.

17 BY MR. COFER:

18 Q. Why did you get oxygen?

19 A. At the time I was flying primarily  
20 international flights, and as we would go around the  
21 world or to far-flung places, with the time change  
22 differences, I would become tired, and so I went  
23 into the cockpit to take pure oxygen to make me feel  
24 less tired.

25 Q. Mrs. Laxinetta, Mr. Rosenblatt listed some

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1 of the other duties that flight attendants have on  
2 flights, in addition to the ones we discussed. For  
3 example, he mentioned pre-flight safety check; do  
4 you recall that?

5 A. Yes, I do.

6 Q. Was smoking permitted during pre-flight  
7 safety checks?

8 A. It is not.

9 Q. He also mentioned that a duty of the flight  
10 attendants was to make sure all of the passengers  
11 were in the seat with their seat belts on and chairs  
12 back; correct?

13 A. Correct.

14 Q. Was smoking permitted during that process?

15 A. No.

16 Q. He mentioned that there were times when the  
17 flight attendants had to assist with the bags,  
18 moving the bags; do you recall that?

19 A. Yes.

20 Q. Was smoking permitted during that time?

21 A. No.

22 Q. He mentioned that the flight attendant's  
23 responsibility was to put the doors in place before  
24 take-off. Was smoking permitted then?

25 A. No.

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1 Q. And then he mentioned that a flight  
2 attendant had to put the doors in place after the  
3 plane landed. Was smoking permitted then?

4 A. No.

5 MR. COFER: Mrs. Laxinetta, thank you  
6 very much. I appreciate it.

7 THE COURT: You may step down.

8 Who is the next witness, please?

9 MR. COFER: For our next witness, we  
10 call Dr. Jolanda Janczewski.

11 THE COURT: What's her last name?

12 MR. COFER: It's Janczewski,

13 Y-a-n-c-z-e-w --

14 THE WITNESS: J-a.

15 MR. COFER: J-a-n. I knew that.

16 J-a-n-c-z-e-w-s-k-i, pronounced "y."

17 Dr. Janczewski.

18 I pronounced it right?

19 THE WITNESS: Yes.

20 MR. COFER: And Jolanda with a J also?

21 THE WITNESS: Yes.

22 MR. COFER: You know, I knew it was a

23 J.

24 THE WITNESS: You're just seeing if I'm

25 paying attention. I was just seeing if you were

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1 paying attention.

2 Thereupon:

3 JOLANDA JANCZEWSKI, Ph.D

4 Having been first duly sworn, was examined and  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. COFER:

8 Q. Would you state your full name, and I won't  
9 ask you to spell it, and business address for the  
10 record, please.

11 A. It's Jolanda Janczewski. 4031 University  
12 Drive, Suite 400, in Fairfax, Virginia.

13 Q. Dr. Janczewski, what do you do for a living?

14 A. I'm the president and co-owner of  
15 Consolidated Safety Services, Incorporated.

16 Q. And what is Consolidated Safety Services?

17 A. CSS, as we call it, is a safety and  
18 occupational health consulting firm. We provide  
19 advice to companies about work place safety, work  
20 place health issues, public safety, public health,  
21 environmental problems, helping employers and  
22 helping owners of buildings cope with problems they  
23 might have with the occupants.

24 Q. Does the health consulting aspect of your  
25 business involve taking air samples, indoor air

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1 quality analyses?

2 A. Absolutely. It's a big part of our  
3 business.

4 Q. When was CSS formed?

5 A. In 1988.

6 Q. And how many professional staff employees  
7 are employed at your company?

8 A. We have about a dozen professionals and then  
9 associated support staff.

10 Q. Does your company do any work for the  
11 government?

12 A. Yes. We are primarily a Federal Government  
13 contractor.

14 Q. Give the jury an idea of some of the  
15 governmental agencies that your company works for?

16 A. Well, our largest client is the Department  
17 of Defense. We work for the Food and Drug  
18 Administration, the Centers for Disease Control, the  
19 National Institutes of Health, Occupational Safety  
20 and Health Administration, the National Institute of  
21 Occupational Safety and Health, the Federal Highway  
22 Administration.

23 Q. What kinds of work has CSS done for the  
24 Centers for Disease Control?

25 A. We did a research project with them several

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1 years ago where they were trying to test the  
2 proficiency of laboratories that were doing testing  
3 on people's blood for the AIDS virus to see whether  
4 or not they were doing it correctly, so they would  
5 send out samples to all these labs to have them  
6 tested, and then we would look at the results and  
7 edit the data and get it back to them.

8 Q. What kind of work did your company do for  
9 the Food and Drug Administration?

10 A. Again, this happened in the whole AIDS  
11 outbreak. The Food and Drug Administration, if  
12 there's a problem with a medical device, like a  
13 pacemaker that might fail, they'll take it out of  
14 the person and replace it, and then that has to go  
15 to the Food and Drug Administration to be examined  
16 to see what was wrong with it. So we developed  
17 standard operating procedures for them so that they  
18 can decontaminate these things that they were taking  
19 out of people before they were given to the  
20 engineers so there would be no risk that the  
21 engineers would pick up any blood-borne diseases.

22 Q. Dr. Janczewski, who were some of your  
23 company's private clients?

24 A. Well, let's see. We've worked for labor  
25 unions. The American Federation of Government

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1 Employees has been a client of ours.

2 Q. What have you done for them?

3 A. Several years ago we did a big indoor air  
4 quality survey study. We looked at people's  
5 attitudes and beliefs about indoor air quality, and  
6 this is the labor union that represents the Federal  
7 Government workers, as well as the workers of the  
8 D.C. government.

9 So we surveyed about 10,000 workers to find  
10 out about the indoor air quality in the government,  
11 Federal Government and D.C. government buildings.  
12 And we did that in conjunction with Johns Hopkins  
13 University who did the statistical analysis of all  
14 of the surveys.

15 Q. Have you ever done work for the American  
16 Association of Airport Executives?

17 A. Right. The American Association of Airport  
18 Executives, as well as the Air Transport  
19 Association.

20 For the AAAE, which are the Airport  
21 Executives, those are the people that run the  
22 airports, we were their on-call safety and health  
23 office for a couple of years where we had an 800  
24 phone line where they could call in if they had a  
25 safety or health problem.

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1           We also put together a big safety manual for  
2 them that told the airports how they needed to  
3 operate, how they stayed in compliance with OSHA  
4 standards. For instance, on air sampling, you know,  
5 when they would have to take air samples when it was  
6 important to look at contamination that the workers  
7 might have, it ran everything from the workers who  
8 did the housekeeping and maintenance to the  
9 engineering staff, to the support, to office staff,  
10 everybody that is involved with airport operation.

11       Q.   Dr. Janczewski, have you done work for R.J.  
12 Reynolds Tobacco Company and the Tobacco Institute?

13       A.   Yes. The company has.

14       Q.   Tell the jury what you've done for those two  
15 organizations.

16       A.   That all started about when the indoor air  
17 quality issue became big. The tobacco industry, as  
18 you can see now, is very interested in what was  
19 causing indoor air quality problems and learning to  
20 understand ventilation systems and how to better  
21 design smoking lounges so that both smokers and  
22 nonsmokers could be accommodated.

23           In the beginning, the work that we did was  
24 more the interpretation of scientific data, looking  
25 at -- looking at studies, helping them to interpret

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1    them, you know, maybe doing some studies, actually  
2    taking measurements, because at that time nobody  
3    really knew what the levels were in the air. And  
4    then towards, you know, more recently, we've done  
5    some cooperative work with other industries that are  
6    interested in the smoking/nonsmoking issues,  
7    designing smoking lounges, that sort of thing.

8       Q.   Thank you. I want to ask you some questions  
9    about your educational background.

10       You earned a bachelor of science in  
11    chemistry from Mary Washington College; correct?

12       A.   That's correct.

13       Q.   And then you received your master's in  
14    public health from the University of North Carolina,  
15    Chapel Hill; right?

16       A.   Right.

17       Q.   Tell the jury what kind of classes you were  
18    required to take in order to earn your master's in  
19    public health?

20       A.   A lot of the classes I had to take for my  
21    master's I also took for my bachelor's degree,  
22    because science moves so fast, so even in a couple  
23    of years if you have a couple-year gap in there,  
24    you're taking stuff all over again because it's  
25    changed a lot.

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1           So I had to take microbiology and  
2   biochemistry, epidemiology, which is the study of  
3   diseases in a population, biostatistics. I  
4   specialized in biohazard sciences, so I took several  
5   semesters of biohazard sciences, and that's the  
6   study of infectious diseases on the job, you know,  
7   worrying about nurses and doctors getting hepatitis  
8   and AIDS on the job.

9           Public policy. Industrial hygiene. That's  
10  the study of learning to use the devices that we use  
11  to take air samples and then analyze them to figure  
12  out what's in the air, so you could take a whole two  
13  semesters on just learning to use that equipment and  
14  understanding what the data means.

15        Q.   And you've also earned a doctorate in  
16  environmental biology and public policy; is that  
17  right?

18        A.   Correct.

19        Q.   I assume you had to take the same kinds of  
20  classes?

21        A.   Yes. Here again, I was again taking some of  
22  these over again.

23        Q.   Were you also required to write a  
24  dissertation in order to earn your doctorate degree?

25        A.   Yes, I was.

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1 Q. If you would tell the jury what a  
2 dissertation is and what the subject of your  
3 dissertation was?

4 A. Well, in order to get a Ph.D or doctor of  
5 philosophy, it's a -- you have to do an original  
6 research project. So after you take a lot of course  
7 work, and you also stand in defense of your  
8 knowledge of the basic science, you have to be in a  
9 committee and stand before them and tell them -- and  
10 they'll ask you questions for days about what you  
11 know about basic sciences, and then they'll give you  
12 written exams for several days.

13 Then you start your own research project.  
14 It has to be an original piece of research that  
15 nobody has ever done before. Then from that, you  
16 write your dissertation, which usually ends up being  
17 a two or 300-page book on that research. Then you  
18 have to stand back in front of all of those people  
19 again and defend your dissertation of the research  
20 that you did.

21 Q. And yours was on what topic?

22 A. At that time, the AIDS virus was just coming  
23 into the population, and there were seven  
24 laboratories in the United States that were licensed  
25 to produce the AIDS virus. They have to produce

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1 thousands of gallons of AIDS that's very pure and  
2 very, very concentrated, because then that virus  
3 goes to all of the research laboratories so you can  
4 study the vaccines and make test kits.

5       There had been two accidents in those seven  
6 laboratories in which the lab workers were infected  
7 with the AIDS virus that they actually were working  
8 with, so my research project was partially sponsored  
9 by the National Institutes of Health because they  
10 did own one of the seven laboratories, and I looked  
11 at how the virus could possibly be moving around the  
12 lab, taking air samples, taking surface samples,  
13 tracking what the workers were doing in these  
14 laboratories, watching -- I was there when incidents  
15 happened to see how they cleaned them up and what  
16 they did and trying to figure out where could we put  
17 procedures in place so nobody would get exposed,  
18 because it was a very, very concentrated virus, so  
19 it was easy -- if you got exposed, it was very  
20 likely you were going to get an infection from it.

21       Q.   Dr. Janczewski, as a result of your work and  
22 your dissertation, did you testify before the  
23 Occupational Health and Safety Administration?

24       A.   Yes, I did. OSHA was -- OSHA, who makes all  
25 of the rules and regulations of how everybody will

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1 behave on their job so everybody is ensured they  
2 have a safe and healthful work place, they were  
3 going to put a blood-borne diseases standard  
4 together to help protect health care workers from  
5 hepatitis and AIDS and other blood-borne diseases,  
6 and part of the process for making these rules, they  
7 have to have public hearings, so they hired me as an  
8 expert to come in and testify on their behalf on  
9 what they had set up for the production  
10 laboratories, as well as regular laboratories.

11 And I had done a little bit of work with  
12 lifeguards and law enforcement, like homicide  
13 detectives, in helping to protect them, so I also  
14 testified on those issues, as well.

15 Q. Dr. Janczewski, is your company,  
16 Consolidated Safety Services, being compensated for  
17 the time that you and your employees have spent  
18 consulting with me and others and preparing your  
19 testimony today?

20 A. Yes.

21 Q. And what is your hourly rate?

22 A. \$175 an hour.

23 Q. Is that the standard commercial rate you  
24 charge your clients?

25 A. That's our standard rate.

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1 Q. Is your compensation in any way dependent  
2 upon the outcome of this case?

3 A. No.

4 Q. Now, this case, Dr. Janczewski, is about  
5 flight attendants who claim that they got sick from  
6 breathing secondhand smoke as a result of breathing  
7 on airplanes. Have you ever done any measurement  
8 studies on planes?

9 A. Yes.

10 Q. Now, before we get to that, let me ask you  
11 this: Is there anything else about your work  
12 experience that allows you to assess flight  
13 attendant exposures on planes?

14 A. Well, I have -- that's been my whole career.  
15 I mean, my whole professional life has been spent  
16 assessing indoor environments, worker environments  
17 or public environments and doing air samples, doing  
18 water samples, doing safety analyses. So I'd have  
19 to say that 18 years of experience and education  
20 pretty well qualifies me to be able to look at that  
21 issue.

22 Q. Let's talk about your work history. Did you  
23 ever work for the National Institutes of Health?

24 A. Yes.

25 Q. Tell the jury briefly what is NIH and what

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1 you did there?

2 A. The National Institutes of Health is located  
3 in Bethesda, Maryland. They are the primary  
4 research arm of the Federal Government for health,  
5 research.

6 It's made up of several institutes. It  
7 isn't just one. A lot of them most people have  
8 heard of. The National Cancer Institute is part of  
9 it. Allergy, Infectious Diseases. The Institute  
10 for Musculoskeletal Disease. There's an institute  
11 for every major group of diseases. They all fall  
12 under NIH.

13 So those different institutes do research at  
14 their own buildings, but at the same time they give  
15 out grants to universities and colleges and private  
16 enterprises to do research on issues, as well.

17 So partly because it's a Federal Government  
18 facility, it's required to have a safety and health  
19 office. And I worked for the safety division, and  
20 that's the staff of safety professionals who keep an  
21 eye out on all of the research that NIH does, as  
22 well as the research that's done under an NIH grant  
23 to be sure that the workers are protected, that the  
24 public is protected, that the environment is  
25 protected, the patients are, and that the work, the

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1 research itself, is protected.

2 Q. Tell the jury the circumstances under which  
3 you went to get your master's in public health in  
4 North Carolina?

5 A. Oh, I had worked at the safety division for  
6 awhile, and then I left to go to a private  
7 consulting firm in the Washington area. Shortly  
8 after I left, I was contacted by the head of the  
9 safety division from NIH. The University of North  
10 Carolina had this program in biohazard sciences, and  
11 they were taking three students into the program,  
12 and NIH was -- and then the program allowed for a  
13 fellowship to pay for your books and your tuition,  
14 gave you money every month.

15 So NIH was allowed to select one of those  
16 students. It was their choice. So Dr. Barclay had  
17 called me and said they'd like to recommend me for  
18 the position and would I like it, and what a deal,  
19 everything was paid for, I couldn't turn it down.

20 Q. So NIH had one fellowship to offer, and  
21 you'd already left their employ at the time that  
22 they gave it to you?

23 A. Yes.

24 Q. You mentioned earlier that when you got your  
25 master's in public health, you emphasized biohazard

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1 sciences. Is the study of biohazard sciences  
2 concerned with airborne contaminants?

3 A. Absolutely. There are a lot of airborne  
4 infectious diseases. They aren't just like AIDS or  
5 hepatitis.

6 Q. Tell the jury generally what we mean by  
7 airborne contaminants?

8 A. Anything that's transmitted in the air.  
9 Tuberculosis is an airborne transmitted disease.  
10 It's not one that if I had it, you're over there,  
11 you're going to get it from me, but if you have  
12 close contact for long periods of time, it can be  
13 airborne transmitted.

14 Airborne diseases are the most dangerous  
15 diseases, of course, because, you know, things like  
16 ebola, when they were afraid that the ebola virus  
17 was airborne transmitted, that's what scared  
18 everyone because an infectious agent can move  
19 through a population so much faster if it's  
20 airborne.

21 So when you study biohazard science, you  
22 have to study a lot about taking air samples, how to  
23 identify what's in the air, how to quantify or count  
24 how much is in the air and then try to figure out  
25 whether that amount of whatever it is is going to

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1 affect somebody. And sometimes the equipment that  
2 you use isn't much different whether you're looking  
3 for a chemical or you're looking for a biological  
4 organism.

5 Q. When you were at the University of North  
6 Carolina, did you ever investigate airborne  
7 contaminants at an airport?

8 A. Yes.

9 Q. Tell the jury about that.

10 A. Part of going through the program in  
11 industrial hygiene, we went out on field trips. We  
12 were always out on field trips to look at different  
13 environments in the triangle Raleigh-Durham area of  
14 North Carolina.

15 And one of the trips that we took was to the  
16 Raleigh-Durham Airport to go look at the airport  
17 operations and see if we could, as students, figure  
18 out where the exposures were, where the airborne  
19 contaminants were, where the safety hazards were.  
20 So we went in as a group and then had to write a  
21 report about what we saw, take the samples, take a  
22 look at it.

23 Q. What sorts of contaminants did you find?

24 A. You know, in an airport, you have a lot -- a  
25 conglomeration of a lot of contamination sources.

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1 You have vehicles pulling up front, dropping people  
2 off. You have buses coming in. You have delivery  
3 trucks coming in. A lot of congested traffic that's  
4 idling. A lot of buses and vehicles that are  
5 idling, and then they're just giving off all their  
6 exhaust.

7 On the back end of the airport, you're  
8 refueling the aircraft. You've got vehicles running  
9 around back there. You have jet aircraft landing,  
10 taking off. So there's a lot of external  
11 contamination going on in the airport. And, of  
12 course, the airport itself has to get air from  
13 somewhere, so it's pulling it from the outside.

14 Then you have the typical indoor pollution  
15 that you have in any building. The carpet is  
16 off-gassing. People's dry cleaning on clothes are  
17 off-gassing. Everybody has contaminants.

18 People, all of us sitting right here are  
19 throwing off thousands of organisms, probably me  
20 more because I'm moving, but, you know, everybody is  
21 a contaminant themselves.

22 So, you know, an airport has its usual  
23 contamination, but then it's surrounded by outside  
24 contamination that's worse than you see in most  
25 other buildings.

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1 Q. Dr. Janczewski, after you received your  
2 master's, you worked for Dynamac Corporation. Tell  
3 the jury just briefly what you did at Dynamac  
4 Corporation.

5 A. Dynamac was a consulting firm in the  
6 Washington area.

7 Q. Now, again, focusing on examples of airborne  
8 contaminants, could you tell the jury about your  
9 work at those labs while you were at Dynamac?

10 A. Dynamac was a big consulting firm. One of  
11 the things they had was a private laboratory that  
12 did work for the government under government  
13 contract.

14 I worked as a safety specialist for Dynamac  
15 working on other contracts, but because we were in a  
16 division of safety experts, when something went  
17 wrong with the laboratory, they always called us up  
18 to run up there and figure out what was wrong. And  
19 I got called one morning because there were a bunch  
20 of mice that had dropped dead over at the lab.

21 Unfortunately, they were what we call  
22 control mice. When you do an experiment, you have  
23 mice, and then you expose them to something,  
24 something that's harmful or something that's going  
25 to help them. The only way you can tell the effect

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1 of that is to have a bunch of mice you haven't  
2 exposed. Those were your control mice.

3       They had this big experiment for a number of  
4 years. All of the sudden, the control mice are  
5 dead. So I run over there with another worker, and  
6 we start crawling through the ceiling. We figure  
7 whatever it is has to be airborne contamination  
8 because they've already figured out nobody fed them  
9 anything they're not supposed to, nobody has been in  
10 that room.

11       So we begin to crawl through the ceiling,  
12 and we crawl and we crawl and we follow the  
13 ventilation system until what we found was there was  
14 a fume hood down at the end of the hall in an old  
15 lab that hadn't been used for a long period of time,  
16 and the fume hood is like what you see on  
17 television, the cabinet that everybody puts their  
18 chemicals in where they put their arms in and they  
19 work with it.

20       Well, those fume hoods are supposed to take  
21 harmful chemicals up through the ceiling, usually  
22 through filters, and outside the building. Because  
23 the lab hadn't been used in a long time, somebody  
24 had disconnected the fume hood and removed a big  
25 piece of the duct work.

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1           So when I was up in the ceiling, the duct  
2 ran up from the fume hood into the dead space in the  
3 ceiling, and then there's about a four-foot gap, and  
4 then the rest of it picked up and went out through  
5 the filters.

6           So somebody had used the lab the night  
7 before and obviously had used something harmful to  
8 the mice. It went up into the dead space in the  
9 ceiling. It went down the hallway. It got sucked  
10 up by the ventilation system and right into the poor  
11 little mice.

12       Q.   No more mice?

13       A.   No more mice.

14       Q.   The Smithsonian. Did you ever work for the  
15 Smithsonian?

16       A.   Yes.

17       Q.   Tell the jury about that.

18       A.   The Smithsonian Institution is a research  
19 organization. Everybody thinks they are just a  
20 museum, but that's really a small part of what they  
21 do. They have a lot of research laboratories behind  
22 the museums that you see, and a lot of research  
23 going on all over the world and a lot of  
24 restoration. You know, they restore paintings and  
25 furniture that goes into the museums. They

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1 restore--in Silver Hill, Maryland is the  
2 restoration--aircraft restoration where they took  
3 the Wright Flyer and restored it, and they recently  
4 restored the Enola Gay. So they have a lot of  
5 operations going to.

6 They also have a federal facility, and so  
7 they are required also to have a safety health  
8 office, and I was part of that staff. There are  
9 about 32 professionals that oversee the safety of  
10 the people that work there as well as the public.

11 We also sit over the National Zoological  
12 Park and there's a wild animal breeding park in  
13 Virginia as well.

14 Q. You told us that in connection with your  
15 dissertation you testified before OSHA. I think you  
16 also told us that your companies then worked for  
17 both OSHA and NIOSH. Can you tell the jury what  
18 those organizations do?

19 A. Both are involved in occupational safety on  
20 the job, safety and health. If anybody is involved  
21 in a union, then you know exactly what I'm talking  
22 about about worker safety and health.

23 OSHA is the regulatory agency. They make  
24 the rules. They are the Occupational Safety Health  
25 Administration. They make the laws by which we all

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1 live. Our job and our business is to go in and  
2 ensure that somebody is operating in accordance with  
3 OSHA standards.

4 If you don't, OSHA is coming into the  
5 employer and levies a fine, sanctions fines, and  
6 they can even go as far as to have criminal  
7 prosecution of somebody who owns a business.

8 Now, NIOSH, on the other hand, is not a part  
9 of OSHA. They are a separate agency. They are part  
10 of the Centers for Disease Control and they are the  
11 National Institute of Occupational Safety and  
12 Health. They do the research. A lot of the  
13 research that they do eventually leads to OSHA  
14 standards, and there's a reason why the two are  
15 separate, so one group does not influence the other.  
16 The government has determined they should be  
17 separate from each other, but only one has legal  
18 authority to sanction fines.

19 Q. Dr. Janczewski, in this case we heard about  
20 permissible exposure levels or threshold limit  
21 values. Would you tell the jury what those are and  
22 what sets them?

23 A. The whole theory in exposure, when you're  
24 exposed to something, is that anything at a high  
25 enough dose or high enough level can be harmful.

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1 Some things that are normally harmful, at very, very  
2 low doses can be harmless.

3 So the whole object of the game, especially  
4 in our business, is to find out at what level will  
5 something cause you harm. But everything doesn't  
6 have that same level, so we depend on groups like  
7 NIOSH who don't make laws but they make  
8 recommendations of levels, and OSHA. There's  
9 another group called the ACGIH, American Council of  
10 Governmental Industrial Hygienists. They are  
11 industrial hygienists who first worked for  
12 government agents, but now everybody seems to belong  
13 to the group.

14 They all establish these limits or these  
15 levels that tell us at this level you can be exposed  
16 to this much of this chemical for eight hours a day,  
17 40 hours a week and we don't expect to see any  
18 health consequences. The PELs that you'll hear or  
19 the TLVs, those are the permissible exposure levels  
20 or the threshold limit values.

21 So it's our job in industrial hygiene to go  
22 in and take air samples, and we pull those levels  
23 and compare what we get in that air sample to what  
24 that recommended level is and we say, okay, we are  
25 well below that and we are okay or we are well above

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1 that and we need to make some changes.

2 Q. I'd like you to give the jury one more  
3 example of an airborne contaminant that you worked  
4 with or discovered while you were at the  
5 Smithsonian, and specifically the one with the  
6 monkey house at the National Zoo.

7 A. The monkey house. Never a dull moment at  
8 the Smithsonian. I got a call one morning. Over at  
9 the National Zoo we had a number of keepers in the  
10 monkey house and the great ape house who had come  
11 down with an organism called Giardiasis. Not a  
12 pleasant organism to get. It gives you terrible  
13 intestinal cramping, diarrhea, fever. It's a  
14 miserable organism to get exposed to. We don't  
15 normally see it in the Washington, D.C. area. It's  
16 seen in high altitudes such as Aspen in Colorado,  
17 but certainly not in Washington.

18 We called over to the veterinarians. The  
19 veterinarians came and told us the monkey house and  
20 the great ape house animals were infested with  
21 Giardiasis. We knew the keepers do not come into  
22 physical contact with the animals, so we couldn't  
23 figure out how it was transmitting.

24 We saw and watched the keepers, what they  
25 were doing, and we had an aerosol transmit problem.

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1 What I found out, every morning they shift the  
2 animals from an inside cage to an outside cage, and  
3 they proceed to go in there and clean the cages.

4 But the way they do that, they take a hot  
5 steam hose. If you live near a zoo, go watch this  
6 one morning. They hit all the animal droppings with  
7 this hot steam to try to disinfect the cage.

8 Of course, you had it in the animal  
9 droppings which is how the organism gets  
10 transmitted. It goes from the animal's intestinal  
11 tract, out the feces and on the ground. When you  
12 hit that with a steam hose, what you do is all the  
13 stuff goes into the air and the keepers were  
14 breathing in the air.

15 We figured out what was wrong. We were able  
16 to change a lot of their procedures, give them  
17 protective masks and clean up the whole thing and  
18 managed to irradiate it. We set it up in the  
19 Chicago Zoo, San Diego Zoo, and a lot of other zoos.

20 Q. Thank you, Dr. Janczewski. Just a few more  
21 questions on your background.

22 Your work for Program Resources, Inc. in  
23 1987, and that was affiliated with Fort Dietrich.  
24 What is Fort Dietrich and what were your  
25 responsibilities there?

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1       A.   Fort Dietrich is a military base in  
2   Frederick, Maryland.  It was originally home of  
3   Biological Warfare Research.  Of course, we don't do  
4   any biological warfare research anymore in this  
5   country, and so half the military base, because they  
6   had these very sophisticated laboratories, have been  
7   donated to the National Cancer Institute so that  
8   they can conduct research.

9       There's all sorts of research going on, AIDS  
10   research and some very infectious disease research  
11   going on, but now the National Cancer Institute runs  
12   it.  PRI, who I worked for, Program Research,  
13   Incorporated, was the contractor hired to run that  
14   side of the military base for the National Cancer  
15   Institute.

16       So PRI supplied the scientists, the  
17   librarians, the maintenance personnel, the  
18   engineers, and the safety staff, and I was part of  
19   that safety staff.

20       Q.   Thank you.

21       MR. COFER:  Your Honor, I don't know  
22   what your preference is in terms of break.  This is  
23   a convenient point if you want to take the afternoon  
24   break or I'm prepared to go on.

25       THE COURT:  Unless the jury needs a

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1 break.

2 (A brief recess was taken.)

3 (The following proceedings were had  
4 outside the presence of the jury:)

5 THE COURT: Be seated, please.

6 MS. ROSENBLATT: Your Honor, before the  
7 jury comes back, I'm assuming counsel, pursuant to  
8 the motion we filed this morning, is not going to  
9 get into--and your ruling--anything post-ban. I  
10 just wanted to clear that so we wouldn't have to go  
11 side bar, and if we are going to argue it, I wish  
12 the witness be excused.

13 MR. COFER: Maybe we'll have  
14 Dr. Janczewski step out because we are moving right  
15 into that full force.

16 THE COURT: Okay. Step outside for a  
17 few minutes.

18 THE WITNESS: Shall I go away?

19 THE COURT: No. Don't go away, but  
20 just step outside the hall.

21 MR. COFER: Let me just finish.

22 MS. ROSENBLATT: It's my motion.

23 MR. COFER: But I never got to finish  
24 where I was this morning before we stopped after the  
25 comment on 893.

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1 MS. ROSENBLATT: I think you ruled,  
2 Your Honor, this morning.

3 MR. COFER: No, he didn't.

4 MS. ROSENBLATT: Any alternative  
5 causation would not be---

6 THE COURT: I'm not sure where he's  
7 going and what he's going to do.

8 MR. COFER: Let the Court rule.

9 How can plaintiff put in Exhibit 893, which  
10 talks about post-ban complaints, talks about smoking  
11 stopped, nothing else changed, talks about flight  
12 attendants and passengers who are complaining of  
13 health problems, nausea, headaches, et cetera,  
14 congressional hearings, how can they put this  
15 evidence in, which they have before the jury, how  
16 can Mrs. Broin tell the jury, pre- and post-bans,  
17 night and day, and we not be permitted to respond?

18 Mrs. Rosenblatt told Your Honor the reason  
19 they put this document in is to tell the jury that  
20 we are liars and that we have committed fraud by  
21 telling them that it wasn't smoking; it was  
22 something else.

23 Well, it's not smoking. Here's where the  
24 confusion is. Mrs. Rosenblatt says we are saying:  
25 Well, smoking may cause it. Something else does,

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1 too. That's Phase 2 to determine what caused a  
2 particular person's problem.

3 If that were our position, I would agree  
4 with that. But that's not our position. Our  
5 position is that secondhand smoke on planes does not  
6 cause disease, period. Other things cause disease.

7 This witness has performed measurement  
8 studies after the ban. She reviewed all the studies  
9 before the ban. She is on the aviation  
10 subcommittee that was formed because of the health  
11 problems, the respiratory problems and other health  
12 problems that have been going on since smoking was  
13 stopped.

14 She is personally involved, a Ph.D., and  
15 you've heard her extensive credentials, in trying to  
16 determine why the complaints, why the health  
17 problems have increased since the smoking has  
18 stopped.

19 And let me finally give you a great piece of  
20 evidence from plaintiffs' own case. Mrs. Rosenblatt  
21 looked at Dr. Steinfeld, the Surgeon General, and  
22 said, "Dr. Steinfeld, do you have to know the  
23 precise mechanism by which cigarette smoking causes  
24 cancer to know it causes cancer?"

25 Steinfeld looked at the jury and said, "No."

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1 Remember the old anecdote, Dr. Snow in  
2 London. There was a cholera epidemic. This was  
3 long before the bacteria theory of disease, long  
4 before the viral theory of disease.

5 But what Dr. Snow did that no one else did,  
6 he noticed people were drinking from the same well,  
7 so he took the pump handle off and the epidemic  
8 stopped.

9 Your Honor, 1990, they took the pump handle  
10 off the planes: They stopped smoking. And the  
11 cholera didn't stop. It didn't change.

12 They put in evidence through Mrs. Broin;  
13 they put in evidence through our documents; their  
14 experts have alluded to it. It's not a surprise.  
15 They have had expert witnesses, Judge, that they  
16 called that they have withdrawn. They had John  
17 Spangler who did a '94 measurement study who was the  
18 co-chair of the '86 Airliner Report, who testified  
19 extensively in his deposition about the post-ban  
20 complaints and trying to discover what the problem  
21 was. I can't say that's why they withdraw, but they  
22 didn't call him.

23 So this is not a surprise. Everyone knows  
24 that this is a problem. There are congressional  
25 hearings that have gone on after the ban in greater

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1 number than before the ban. There are more studies.  
2 The whole industry is working to try to figure out  
3 why, when smoking stopped, the problems continued.  
4 This person---

5 THE COURT: What problems continued?

6 MR. COFER: Respiratory problems.

7 THE COURT: Well, the---

8 MR. COFER: Let me tell you what  
9 plaintiffs are claiming in this case. They say  
10 flight attendants had lung cancer, heart disease and  
11 respiratory problems. They are saying there's  
12 excess disease. You know, vague respiratory  
13 problems, what have you. That's clearly in the  
14 case.

15 Now, here's where the whole thing gets a  
16 little confused because where we always end up when  
17 we get into this discussion, Mrs. Rosenblatt says:  
18 What does it have to do with lung cancer? What does  
19 it have to do with heart disease?

20 The fact is, Your Honor, there is no  
21 evidence, none, zilch, zip that flight attendants  
22 get more lung cancer or heart disease than  
23 non-flight attendants. There's none. There is none  
24 in the record.

25 They talk about their nationwide class for

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1 all these diseases, but there's none of that in the  
2 record. The only evidence there is on flight  
3 attendants' illnesses are these respiratory  
4 problems, and frankly, some breast cancer problems  
5 caused by radiation.

6 So the point is, the vast majority to the  
7 extent that they have a class, to the extent that  
8 they get far enough that they have people who come  
9 in and try to prove claims, the vast majority have  
10 to be those with the respiratory ailments that  
11 didn't stop, that have increased.

12 THE COURT: A lot of things can cause  
13 respiratory problems.

14 MR. COFER: I'm sorry?

15 THE COURT: Lots of things can cause  
16 respiratory problems other than smoke and including  
17 smoke.

18 MR. COFER: Our position is on planes,  
19 smoking doesn't. Now, you know, we need to make---

20 THE COURT: I don't know what kind of  
21 testimony she is going to make, but is she going to  
22 compare numbers?

23 MR. COFER: Here's what she's going to  
24 say. She's going to say that she was hired by the  
25 ASHRAE aviation subcommittee, the subcommittee that

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1 has been set up to study this, has NIOSH on it, has  
2 the flight attendants on it, has the FAA on it, has  
3 toxicologists on it. She was charged with that  
4 committee, her firm, to conduct a survey of all the  
5 airlines to see, comparing the problems before  
6 smoking was banned with after.

7 She's going to testify based on her survey,  
8 based on her measurements, based on her review of  
9 the literature, that the nature of the complaints,  
10 the health problems, is the same, the type of  
11 complaints is the same.

12 She's also going to testify, based on her  
13 work, that the numbers have increased, that the  
14 numbers of problems have increased since the ban.

15 She's going to talk about the specific work  
16 she has been hired to do looking at all the  
17 confounding factors trying to determine why, if  
18 smoking caused all this stuff, which everyone--that  
19 was the big assumption: If you stop smoking, you  
20 stop the problem. They stopped smoking; it didn't.

21 So now they have all of the experts and  
22 they're having congressional hearings and they are  
23 trying to figure out, then, what's going on.

24 So our position is secondhand smoke on  
25 planes, permitting the reasons you heard this

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1 morning, does not cause disease. There is not  
2 sufficient exposure.

3           You remember the old "the dose makes the  
4 poison." We are bringing in experts who are going  
5 to tie that up.

6           So then the question is, how do we rebut  
7 when Mr. Rosenblatt gets up in opening statement and  
8 says, "I have a nationwide class of thousands of  
9 flight attendants sick from breathing smoke on  
10 planes," when they put in exhibits saying, "These  
11 guys are lying to this day saying that the problem  
12 hasn't stopped," when Mrs. Broin takes the stand and  
13 says, "Night and day, pre- and post-ban," then our  
14 lips are sealed? We can't tell the jury the truth  
15 and the whole story?

16           THE COURT: That's not really an issue  
17 at the moment.

18           MR. COFER: It will be with this  
19 witness.

20           THE COURT: No. I want to hear what  
21 the plaintiffs say.

22           MR. ROSENBLATT: You know, it's just  
23 unbelievable, Judge. If we were all in the same  
24 courtroom today, you clearly ruled on this. They  
25 simply re-argue things.

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1 THE COURT: There are two ways to go on  
2 this thing. One is that you have to prove  
3 secondhand smoke causes disease. Doctors have come  
4 in, scientists have come in and opined on your side  
5 of the case that it does, scientifically speaking it  
6 does.

7 They are saying there are statistics out  
8 there that tend to disprove that concept on numbers  
9 alone. Not on the science, but on the numbers; that  
10 X number of people exposed didn't get it before,  
11 didn't get it afterwards, so forth and so on.  
12 There's a numbers game and that's what they are  
13 saying, as I understand it, that's her study.

14 The question basically is, more people got  
15 respiratory problems after the ban than before.  
16 That's lots of reasons for that. More flights, more  
17 people, more other situations, but it doesn't have  
18 anything to do with whether or not it causes a  
19 disease. And there's where the difference comes in.

20 Now, if you take that concept and say, all  
21 right, we are looking at causation and can it be  
22 determined whether smoking causes a disease, that's  
23 one issue.

24 If you get into Phase 2, if you get to that  
25 point, where you're saying now you have a disease,

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1 now what was it caused by, that's a different story.  
2 And it could be caused by lots of other things  
3 including smoke or expiring smoke.

4 So we don't know where to make that line of  
5 differentiation. If you're doing it on a general  
6 basis that your evidence tends to show that  
7 secondhand smoke does not cause disease--

8 MR. COFER: Exactly. That's exactly  
9 why.

10 THE COURT: --that's the only thing we  
11 haven't heard, and that's by the fact that she is  
12 comparing numbers?

13 MR. COFER: No, no. I'll tell you what  
14 that's by, and here's a time line that will describe  
15 it.

16 It's by there were measurement studies  
17 before smoking was banned measuring what was on  
18 planes. All of those were below those PELs and TLVs  
19 that we just described.

20 There were measurement studies on planes  
21 after smoking was banned, and the numbers, what was  
22 measured, are basically the same. No real  
23 difference. What we have in terms---

24 THE COURT: I don't follow that.

25 MR. COFER: Okay. Here's what happens.

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1 You go on airplanes and you take air samples and you  
2 measure things like volatile organic compounds; TSP,  
3 total suspended particles; you measure carbon  
4 dioxide; you measure carbon monoxide, and what those  
5 are indicators of, some of them are carcinogens,  
6 some of those are irritants, some of those are just  
7 indicators of air quality. They did measurement  
8 studies before smoking was banned and they have  
9 results.

10 THE COURT: But that doesn't prove the  
11 issue.

12 MR. COFER: What it proves is that  
13 nothing changed except smoking stopped. It's the  
14 pump handle example.

15 THE COURT: It doesn't prove the point.

16 MR. COFER: Your Honor, I think it does  
17 prove the point, and let me say one more thing,  
18 because there's one thing Mr. Rosenblatt said today  
19 I agree with. You have ruled on this. You ruled  
20 three times in our favor. The fourth time  
21 Mrs. Rosenblatt came in and then they had this  
22 argument, and they essentially said our position was  
23 different than what it is.

24 THE COURT: I think the point being,  
25 you could show that there are other things in an

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1 airline, in an airplane, that exist, and this is  
2 your point, that you have all these other  
3 contaminants in the air, not necessarily smoke, but  
4 you also have smoke.

5 Now, when the ban was introduced, these  
6 other elements were there and they may cause  
7 respiratory problems. So what? That doesn't prove  
8 that smoke didn't cause respiratory problems.

9 MR. COFER: Well, it certainly does.

10 THE COURT: No, it doesn't.

11 MR. COFER: It is exactly  
12 Dr. Steinfeld's example. He went through it---

13 THE COURT: No, it doesn't do that.  
14 That's something that's---

15 MR. COFER: That's for the jury to  
16 determine, Your Honor. It's clearly probative  
17 evidence.

18 THE COURT: Yes, but for her to come up  
19 and say it doesn't is a different story. I don't  
20 think she's qualified even to do that.

21 MR. COFER: Here's what she will say.  
22 She will say, "I did a survey. Here's what I did.  
23 Here's what I found. Here's my opinion. Has the  
24 nature of the complaints changed, the type of  
25 complaints? No. Has the quantity of the health

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1 complaints and problems changed? Yes, they've  
2 actually increased. Why? What gives? Well, let me  
3 tell you what we're doing. Here's what I've been  
4 charged by ASHRAE TC9.3."

5 Let me, because I throw numbers around and  
6 it doesn't have any meaning.

7 ASHRAE sets the ventilation standards. You  
8 heard Mr. Godly testify to them today. There is no  
9 ventilation standard for airplanes. They have  
10 recognized that planes are completely different than  
11 any other enclosed environment.

12 What has happened, they brought the experts  
13 from all over, every discipline. They have the  
14 flight attendant unions there, they have the FAA in,  
15 they have NIOSH there, and they have the  
16 manufacturers there, and they are all trying to  
17 figure out why are we still having health problems.

18 THE COURT: Let me get down to the  
19 basics. One of the issues was not whether ETS on  
20 airlines caused smoke--that was not one of the basic  
21 issues. The question was whether secondhand smoke  
22 causes disease including cancer and so forth and so  
23 on. What you're saying, it doesn't go to that  
24 issue. It only goes to a partial issue. And what  
25 you're trying to say is that if there are still

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1 people who have respiratory problems on airplanes  
2 after the ban, ergo, it wasn't the smoke. That's a  
3 quantum leap.

4 MR. COFER: What I'm saying is this:  
5 Hey, if you never had smoking on planes, you'd have  
6 the exact same situation.

7 THE COURT: I don't know about that  
8 either.

9 MR. COFER: Well, that's my position  
10 and I'm entitled to prove that.

11 THE COURT: I don't know if that's the  
12 science--

13 MR. COFER: But I get to put my case  
14 on.

15 THE COURT: --to make that  
16 determination from that.

17 MR. COFER: Here's what's really  
18 happening. Plaintiffs have chosen to bring in  
19 surgeon generals to say things like we're not real  
20 hip on cigarette companies or tobacco.

21 THE COURT: Let me just put it in  
22 perspective because I don't want to overlap with  
23 Phase 2, and that's where the problem comes in.  
24 You'll be perfectly entitled to do all that in Phase  
25 2 and find out where it came from. I assume you're

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1 also going to have scientists who come in and talk  
2 the scientific difference between what they put on  
3 about causation.

4 MR. COFER: You bet. Let me tell you  
5 what we're doing today if it's not too obvious.

6 THE COURT: There are other  
7 contaminants in the air.

8 MR. COFER: Hopefully it's obvious, but  
9 I don't know how well I've done it. What we've  
10 tried to do is show planes are different,  
11 ventilations are different, exposures are different.

12 Now we bring on Mrs. Laxinetta who says  
13 flight attendant activity patterns, how long they  
14 were exposed, how many hours a month they were  
15 exposed, is really pretty minimal.

16 Now, you have the whole premise of  
17 plaintiffs' case.

18 THE COURT: What is she comparing it  
19 to?

20 MR. COFER: Now, Dr. Janczewski?

21 THE COURT: Yes.

22 MR. COFER: In terms of exposures?

23 THE COURT: Yes. Where is she getting  
24 the numbers from to say the '50s, '60s and '70s?  
25 Where is she getting those numbers?

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1 MR. COFER: What she will say is, "I've  
2 looked at all of the studies."

3 THE COURT: Studies from when?

4 MR. COFER: Well, the first one started  
5 in 1971. It's the Public Health Service. It was  
6 the surgeon general's agency that conducted it. so  
7 the first was '71.

8 "I reviewed all the studies from '71 through  
9 '97. I conducted one of them. I've sat down with  
10 flight attendants, with flight attendant unions,  
11 with airlines, and I have said, 'Tell me what the  
12 problems are on the planes.'"

13 THE COURT: I'm not concerned about  
14 that, and I do understand your position. Is she  
15 going to opine the ultimate opinion that secondhand  
16 smoke on airplanes does not cause disease or cancer?  
17 Is she going to say that or is she just going to  
18 give you the test results?

19 MR. COFER: Well, let me tell you what  
20 her opinion would be.

21 THE COURT: Because I don't know if  
22 she's in a position to make that statement.

23 MR. COFER: Well, I'll tell you what.  
24 I mean, here's the opinion she's going to give:  
25 That the type of complaint hasn't changed; that the

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1 number of complaints, that it has increased; was  
2 smoking the cause of the problem, no.

3 THE COURT: Okay. That testimony was  
4 elicited on plaintiffs' case.

5 MR. COFER: Yes.

6 THE COURT: Okay.

7 MS. ROSENBLATT: No, Your Honor. It  
8 really wasn't.

9 THE COURT: Yes, it was.

10 MS. ROSENBLATT: We had one flight  
11 attendant, her personal situation.

12 THE COURT: No. Other than that. It  
13 came out. It was brought out on plaintiffs' case.  
14 Within those parameters, I think it's all right to  
15 have her do those questions. I don't want to get  
16 into the conflict as to whether or not on an  
17 individual basis there's a causation factor.

18 MR. COFER: We will not touch  
19 individual basis, individual flight attendants,  
20 individual---

21 THE COURT: That's one factor toward  
22 causation that you say disproves the plaintiffs'  
23 case.

24 MR. COFER: Exactly. That's exactly  
25 right.

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1 THE COURT: All right.

2 MS. ROSENBLATT: Your Honor, we would  
3 have to bring--you know, based on your ruling, we  
4 didn't have--all the class representatives need to  
5 testify. We withdrew certain experts based on your  
6 ruling because it wasn't necessary to talk about  
7 post-ban. That was why several experts didn't  
8 testify. We restricted the testimony of experts  
9 because that was really a non-issue. There was no  
10 evidence that heart disease or any serious  
11 conditions, chronic conditions, cancers, were caused  
12 post-ban. And Your Honor also ruled that ongoing  
13 studies that they were trying to subpoena were out.  
14 Now suddenly all of this is coming in.

15 THE COURT: No. I think that's  
16 different from what we are talking about here.

17 MS. ROSENBLATT: It's really the same  
18 thing, Your Honor.

19 THE COURT: No, it's not.

20 MR. ROSENBLATT: Alternative causation.

21 MS. ROSENBLATT: It's alternative  
22 causation.

23 MR. COFER: No, it's---

24 MS. ROSENBLATT: You spoke for 15  
25 minutes. I'd like to have three minutes.

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1 MR. COFER: I apologize.

2 MS. ROSENBLATT: You know, and this  
3 document is Smokers' Advocate, which was one of a  
4 hundred or more that came in to show the types of  
5 publications from the tobacco company. I mean, they  
6 are grasping at straws to make this evidence. This  
7 is highly objectionable. We have never seen this.  
8 This basically is evidence speaking. It's  
9 inaccurate. It talks about pre-ban complaints.  
10 This woman---

11 THE COURT: I'll tell you what. Even  
12 if they put it on, you will have rebuttal and you  
13 can bring these people in and you can testify to  
14 your heart's content.

15 MS. ROSENBLATT: Yes, but it will be  
16 very extensive rebuttal, Your Honor.

17 THE COURT: Well, it will be just as  
18 extensive the other way around.

19 MS. ROSENBLATT: We have not received  
20 any study from this witness. Now we are told she  
21 has conducted a study. I have never received a  
22 study about her complaints and what she found  
23 post-ban versus pre-ban. This is news to me, and  
24 this woman has worked for the tobacco industry. We  
25 have gotten a letter yesterday, over \$800,000 she's

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1 received.  
2 THE COURT: Now you're throwing  
3 something new to me now.  
4 MS. ROSENBLATT: I just heard something  
5 now.  
6 THE COURT: When did this come about,  
7 this chart?  
8 MS. ROSENBLATT: Where is it?  
9 MR. ROSENBLATT: All the charts.  
10 THE COURT: Whoa. You took the  
11 deposition--  
12 MS. ROSENBLATT: There was no study in  
13 her deposition.  
14 THE COURT: --and was it ever mentioned  
15 that she made such a study, that she's prepared such  
16 a chart, that these are the things she is going to  
17 testify about?  
18 MR. ROSENBLATT: No.  
19 MS. ROSENBLATT: Definitely not, Your  
20 Honor.  
21 MR. COFER: Wait, wait, wait.  
22 MS. ROSENBLATT: I guess  
23 post-deposition again like the other witness.  
24 MR. COFER: This is a demonstrative  
25 aid. She hadn't prepared this chart. She wasn't

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1 asked about this chart. We gave not one but two  
2 disclosures.  
3 THE COURT: Was the plaintiff put on  
4 notice that this is what her testimony was going to  
5 be?

6 MR. COFER: Yes.

7 MS. ROSENBLATT: No, we were not.

8 MR. COFER: Absolutely. Look at the  
9 expert fact disclosures. Look at her deposition.  
10 The third opinion she gave in her deposition, when  
11 Mr. Hoag said--maybe it wasn't Mr. Hoag. In the  
12 deposition: "What are your opinions?"

13 "That the complaints have increased  
14 post-ban." I'll get the deposition.

15 MS. ROSENBLATT: She never said she  
16 conducted a study.

17 MR. COFER: Sure, she did.

18 MS. ROSENBLATT: And determined, based  
19 upon a scientific study, of complaints pre- and  
20 post-ban. That was not in her deposition. I  
21 re-read it last night.

22 MR. ROSENBLATT: She clearly says in  
23 her deposition she's not a scientist. Clearly says  
24 that.

25 MR. COFER: Cross-examine her.

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1 MS. ROSENBLATT: This is not for trial,  
2 Your Honor. This is a surprise.

3 MR. COFER: It is not surprise. You  
4 had your own witness who conducted the '94 study who  
5 was examined at great length on it and you chose not  
6 to call him.

7 MS. ROSENBLATT: Your Honor, as you  
8 see---

9 MR. COFER: It's true.

10 MS. ROSENBLATT: Excuse me, counsel.

11 This is changing at midstream. Now this  
12 study becomes our witness' study. There is no  
13 study, Your Honor, that she has conducted.

14 THE COURT: Look, you brought out a lot  
15 of testimony to the effect that smoking--secondhand  
16 smoke causes disease. They're trying to show that  
17 secondhand smoke doesn't cause disease. If they  
18 want to show through this process and convince this  
19 jury that it doesn't cause disease, I think they are  
20 entitled to do that.

21 MS. ROSENBLATT: But not through this  
22 witness, Your Honor. She hasn't conducted a study.

23 THE COURT: Well, I don't know what her  
24 qualifications are to make that statement. All she  
25 can do is testify what her study showed, whether 14

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1 rats died or 15 rats died, or whatever it may be,  
2 that one color was green and the over was blue.  
3 That's a study and she can testify to that. But  
4 meaning thereof is another matter.

5 MS. ROSENBLATT: Can we voir dire her,  
6 then, to find out if she conducted a study and when  
7 she did, because it's not present in her deposition.

8 THE COURT: I think they're entitled to  
9 that.

10 MS. ROSENBLATT: I don't believe there  
11 is a study. If there was, it was not disclosed to  
12 us. We certainly haven't received a copy of that  
13 study.

14 THE COURT: Who prepared this chart  
15 here?

16 MR. COFER: We prepared this chart as a  
17 demonstrative aid.

18 THE COURT: Okay. Why don't you just  
19 put it away for the moment. Okay?

20 MR. COFER: I certainly won't show it  
21 to the jury until I lay the foundation in that part  
22 of the testimony.

23 THE COURT: Yes. Put it away for now.  
24 Let's bring her in and talk to her on voir dire and  
25 see what she's going to testify about.

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1 Not the jury.  
2 MR. COFER: Just so one thing is clear,  
3 Your Honor. Her deposition was taken. At Page 12  
4 she was asked her opinion: "What conclusions have  
5 you reached in this case?"  
6 "And I guess the third thing would  
7 be"--  
8 THE COURT: What did she say?  
9 MR. COFER: --"that what we've seen in  
10 cabin air as far as complaints"--  
11 THE COURT: Wait. One second, please.  
12 One second.  
13 MR. COFER: --"what we have seen as far  
14 as complaints associated with cabin air have been  
15 consistent for the last several years, pre-smoking  
16 ban, post-smoking ban. The nature of the complaints  
17 haven't changed. The type of complaints haven't  
18 changed, and actually, in the recent past since the  
19 smoking bans, we have actually seen an increase in  
20 the number of complaints, which now leads us to  
21 believe it doesn't have anything to do with the  
22 contaminants in the air. It's got to be relative to  
23 something else."  
24 THE COURT: Okay. Fine.  
25 MR. COFER: Page 12.

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1 THE COURT: That's as far as she goes  
2 with it?  
3 MR. COFER: No. I mean, she will go  
4 on.  
5 MS. ROSENBLATT: That's as far as she  
6 goes, and when she was asked--  
7 MR. COFER: You didn't ask the  
8 questions.  
9 MS. ROSENBLATT: --what she did, she  
10 never said she did a study and we were not provided  
11 with a study.  
12 THE COURT: Let's find out. Let's  
13 bring her in.  
14 THE BAILIFF: Bring her in?  
15 THE COURT: Yes. Now it's okay.  
16 MR. COFER: And her study is Page 28 of  
17 the deposition.  
18 MR. DAVIDSON: Line 17.  
19 MR. COFER: Line what?  
20 MR. DAVIDSON: 17.  
21 (The witness entered the courtroom.)  
22 MR. COFER: Line 17. So Page 28 is  
23 when she was asked about her study.  
24 MR. ROSENBLATT: Well, why don't you  
25 just tip her off now. You know, it just doesn't  
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1 stop.

2 THE COURT: All right.

3 MR. ROSENBLATT: It just doesn't stop.

4 THE COURT: Just a moment. It's going  
5 to stop now. Both sides. I don't want to hear this  
6 nonsense, I really don't. And you're going to stop  
7 standing up and yelling and accusing each other of  
8 doing things that you're not happy with. It doesn't  
9 work in the courtroom, not in my courtroom. Maybe  
10 in somebody else's, but not mine. Let's not do it.

11 The witness is here. We're going to enter  
12 into a voir dire situation. Questions will be  
13 asked. She'll give answers sufficient.

14 Have a seat.

15 Okay. You may question.

16 VOIR DIRE EXAMINATION

17 BY MR. ROSENBLATT:

18 Q. Have you conducted a study comparing  
19 post-ban complaints to pre-ban complaints?

20 A. I call it survey, yes.

21 Q. Have you conducted a study comparing  
22 post-ban complaints and pre-ban complaints?

23 A. Mr. Rosenblatt, I have a problem with the  
24 question because study means something different to  
25 me than it might mean to you. I have done a survey

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1 of post- and pre-ban complaints, yes.

2 Q. Is that the same as a study in your opinion?

3 A. No.

4 Q. So you never conducted a study comparing  
5 post-ban and pre-ban complaints, correct? You  
6 conducted a survey, but not a study?

7 A. Correct.

8 Q. Okay. When did you do that survey?

9 A. In 1994. Could have been early '95.

10 Q. Did it have a title?

11 A. I suppose it did. I don't recall it. I did  
12 it for a presentation.

13 Q. You did the survey strictly in connection  
14 with a speech, a talk you were giving?

15 A. Correct.

16 Q. To what group?

17 A. The American Society of Heating,  
18 Refrigerating and Air Conditioning Engineers. It  
19 was one of their public forums.

20 Q. This was something that you decided to do?

21 A. No. I was assigned to do it by an ASHRAE  
22 committee.

23 Q. Was that survey ever published anywhere?

24 A. In the minutes of that ASHRAE meeting, that  
25 winter meeting.

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1 Q. Well, was it ever published anywhere that  
2 the public would have access to it?

3 A. The meeting minutes are public.

4 Q. What did the survey consist of? I mean,  
5 what did you do?

6 A. You mean how did I get the information for  
7 it?

8 Q. Yes.

9 A. Mostly through phone calls and discussions.  
10 I called inflight service managers of airlines,  
11 engineers, management, public relations people,  
12 representatives from the Air Transport Association,  
13 to collect the information on, you know, what types  
14 of complaints, try to quantify them, try to qualify  
15 them, how long these complaints have been going on,  
16 the whole history. My assignment was to provide a  
17 talk on the history of complaints.

18 Q. A history of flight attendant complaints?

19 A. Correct. Pre-1994.

20 Q. And what were you comparing in that survey,  
21 if anything?

22 A. Well, we were trying to look at--we were  
23 trying to look at, you know, the past complaints as  
24 opposed to the more recent complaints because there  
25 were a number of factors that were being discussed,

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1 the different types of ventilation systems on  
2 aircraft, the smoking issues, the smoking bans.  
3 There were a lot of things that we were considering  
4 and everybody was curious as to about, well, how  
5 were the complaints laying out over the years: were  
6 we getting more, were we getting less, what was the  
7 nature of them.

8 Q. You did this completely on your own?

9 A. Yes.

10 Q. I mean, you didn't have assistance or  
11 anything?

12 A. A couple of my staff might have worked on a  
13 little of it, but I did most of it myself.

14 Q. Most of the phone calls?

15 A. Right.

16 Q. And were they all made in one day or a few  
17 days?

18 A. Oh, no. It took me--it was over a couple of  
19 months.

20 Q. Did you make notes in the---

21 A. Yes.

22 Q. Do you have them?

23 A. No.

24 Q. What happened to them? In other words, you  
25 would make a phone call?

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1 A. And take notes.

2 Q. You would talk to somebody about complaints.  
3 Presumably you made notes?

4 A. Right.

5 Q. Those notes don't exist anymore?

6 A. They might. I don't know. Sometimes when I  
7 prepare a speech, I'll put all the notes I have for  
8 a speech--I have a whole file of nothing but talks  
9 that I give. It might be in a daily log that I keep  
10 of all my phone calls. I don't know if I would  
11 still have those.

12 The final results--the information that I  
13 could find out, I put together handouts for that  
14 ASHRAE presentation. Those are available as part of  
15 the minutes.

16 Q. You did not speak directly with flight  
17 attendants, did you?

18 A. Let me think. No. Just the union  
19 representative for the flight attendants. I spoke a  
20 lot with him.

21 Q. Now, the minutes you refer to, those were  
22 not court reported, word-for-word minutes, are they?

23 A. I'm hesitating because they used to be more  
24 like that and now they are more brief. Back in '94  
25 they were almost the word-for-word minutes.

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1 Q. Do you have a copy of that?

2 A. Not here.

3 Q. You didn't talk to Norma Broin or Alfred

4 Lee's estate or Carol Coy's estate?

5 A. No.

6 Q. You didn't talk to any of the flight  
7 attendants in this case?

8 A. I talked to the representative of the flight  
9 attendants. Not you the representative. The flight  
10 attendants' union representative. And I listened to  
11 the flight attendants that came to talk to the  
12 ASHRAE committee.

13 Q. Were you aware of this lawsuit at that time?

14 A. No.

15 Q. Now, this survey that we were just talking  
16 about, you would agree it's not a scientific study?

17 A. No. There's no statistical analysis  
18 involved. It's a simple survey.

19 Q. It's not the kind of thing that could be  
20 published as is, as of the time you gave your  
21 presentation in any kind of peer-reviewed journal?

22 A. Well, in peer-reviewed, no. It can be  
23 published in a non-peer-reviewed.

24 MS. ROSENBLATT: We have a further  
25 motion after.

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1 MR. COFER: I have some questions,  
2 please.

3 VOIR DIRE EXAMINATION

4 BY MR. COFER:

5 Q. Dr. Janczewski, here's what I want to  
6 clarify. I want you to tell the Judge about your  
7 1994 study. Tell him about your 1994 survey. Tell  
8 him what ASHRAE TC9.3 is. Tell him your role on it,  
9 everyone else who was on it, and the purpose of it,  
10 so that the Court can understand what you did,  
11 what's going on and why.

12 A. Oh, okay. In 1994--ASHRAE, the American  
13 Society of Heating, Refrigerating and Air  
14 Conditioning Engineers, which are the engineers that  
15 put together the codes and standards for ventilation  
16 systems and general building comfort, and set the  
17 standards for indoor environments, there has been a  
18 lot of debate on whether or not the ASHRAE standards  
19 were applicable to aircraft cabins.

20 ASHRAE has a technical committee assigned to  
21 every issue out there. They have a TC9.3 committee  
22 which is called the transportation committee. So  
23 what ASHRAE decided to do is create a subcommittee  
24 under TC9.3 and it was called the aviation  
25 subcommittee to look specifically at that issue of

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1 do the ASHRAE standards apply.

2 I was one of the original members on the  
3 TC9.3 subcommittee, and on it was the flight  
4 attendants' union, the National Institute of  
5 Occupational Safety and Health, all of the aircraft  
6 manufacturers: so Boeing, McDonnell Douglas, Airbus,  
7 all of the major airlines: United, Continental,  
8 TWA, as well as ATA, which is the major trade  
9 association representing the airlines. Flight  
10 attendants' union has a representative there, and  
11 then there are a number of flight attendants that  
12 are at all of the meetings. A lot of engineers,  
13 ventilation engineers, industrial hygiene  
14 professionals such as myself who are air quality  
15 testing specialists, component manufactures, the  
16 manufacturers of filtration and ventilation systems.

17 So everybody sitting around this table  
18 trying to decide what kinds of standards should we  
19 have, what level should we set in the aircraft, what  
20 should be for comfort, what should be for health,  
21 and so what we did in the very beginning was we  
22 wanted to put on a forum to educate the public on  
23 it.

24 So it was the very first forum, and the head  
25 of the committee assigned me to put something--a

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1 talk to brief everybody because they are public  
2 meetings and everybody gets in. All sorts of people  
3 attend and the room gets more and more crowded.

4 MR. COFER: Let me interrupt for a  
5 second.

6 Your Honor, may I approach and hand you her  
7 deposition where she was asked about this and  
8 described it in detail at Page 19 and 20?

9 THE COURT: It's not appropriate.

10 MR. COFER: All right. I'm sorry.

11 Go ahead.

12 THE WITNESS: Shall I go on?

13 THE COURT: I don't even know where  
14 you're headed with all of this. So the question is,  
15 what did you do and how did you do it?

16 THE WITNESS: I put together this  
17 survey that I just described.

18 Q. (By Mr. Cofer) Now, tell the Judge about  
19 the study you did in '94.

20 A. The '94 study?

21 Q. Right.

22 A. Right prior to ASHRAE 9.3 subcommittee being  
23 formed, we had conducted a study on behalf of the  
24 Air Transport Association. It's a trade association  
25 representing all the major U.S. carriers: United,

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1 TWA, Continental, Delta.

2 Q. What kind of study? Tell him what you did.

3 A. They asked us whether we could go on board,  
4 put together a study to go on board, sample the air,  
5 look for the contaminant levels, and then report  
6 back to them on corrective measures or whether or  
7 not they actually had a problem.

8 The whole issue of aircraft air quality was  
9 becoming so big at that time. There was more and  
10 more concern about it, and the airlines were very  
11 concerned that they had something--they had a  
12 problem they needed to take care of.

13 To put the study together, the first thing  
14 we did is we looked at all the prior studies that  
15 were done to see whether we had better scientific  
16 instrumentation now, whether there was a better way  
17 to do it, whether we could build a matter mouse  
18 trap, talk to all the airlines about where they  
19 thought the problem was.

20 One of the issues was that perhaps it had to  
21 do with the older aircraft configuration and the  
22 newer generation aircraft. We had a lot of  
23 discussion on what aircraft we should test, and then  
24 we went on board and we tested 35 flights, I think.  
25 And released a report on that.

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1 Q. Smoking was banned in 1990?

2 A. Correct.

3 Q. ASHRAE TC9.3 was formed in 1994?

4 A. Correct.

5 Q. Why did they form it in '94 if smoking  
6 wasn't a problem?

7 THE COURT: That's really not the  
8 point. The point is you did the study; you found  
9 out by taking samples of the air and everything else  
10 about contaminants in the planes, right? What was  
11 the result of the study?

12 THE WITNESS: We really didn't see  
13 anything different from the studies that were done  
14 in the past. The numbers were just about the same.

15 THE COURT: With or without tobacco  
16 smoke?

17 THE WITNESS: That's correct. They  
18 were about the same.

19 THE COURT: Which studies in the past  
20 were you talking about?

21 THE WITNESS: We looked at The Airliner  
22 Study, the GEOMET study. There was one by---

23 THE COURT: What years?

24 THE WITNESS: You know, I have a---

25 MR. COFER: Well, would it assist you

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1 to see your exhibit?

2 THE WITNESS: Yes, it would. I laid  
3 them all out there because I'm always getting mixed  
4 up of what year they were.

5 MR. COFER: May I show her the exhibit,  
6 Your Honor?

7 THE COURT: Which exhibit are you  
8 talking about?

9 MR. COFER: It's the one that we have  
10 been discussing.

11 THE WITNESS: Oh, you have a small  
12 copy.

13 MR. COFER: Well, let me show it to the  
14 Judge and see whether he agrees.

15 THE WITNESS: Some of the older ones  
16 tested for constituents.

17 THE COURT: I don't understand this.

18 THE WITNESS: Okay. These are all the  
19 studies that were done. These are the congressional  
20 hearings. This is where your two-hour smoking ban  
21 is and your six-hour. So what had happened was,  
22 there's been a flurry of complaints and an increase  
23 of complaints, even since the smoking ban. So those  
24 are all the major flight attendant studies that were  
25 done.

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1 Q. (By Mr. Cofer) Tell him about congressional  
2 hearings post-ban and activities.

3 MR. COFER: Your Honor, while we're  
4 here, just because this issue of surprise that has  
5 been raised---

6 THE COURT: Well, she's talking about a  
7 study. She was asked initially, "Did you make a  
8 study?" She said, "No. I didn't make a study. I  
9 made a survey." Now she's talking about a study.  
10 So you're throwing in a curve ball at me because now  
11 she's talking about a study and a survey.

12 MR. COFER: Let me try to clarify it,  
13 because if I created the confusion, I apologize.

14 She's done three things of interest: The  
15 '94 survey, and Mr. Rosenblatt said that's not a  
16 study; that's a survey. She did a '94 study.  
17 That's a separate study. She's been a voting member  
18 since the inception of this aviation subcommittee  
19 that wasn't even formed until four years after the  
20 smoking ban. The express purpose was to try to  
21 figure out why they have all these health complaints  
22 and problems from flight attendants on planes.

23 Q. (By Mr. Cofer) Now, let me say one more  
24 thing.

25 Who is John Spangler?

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1 A. He's from Harvard. He's with the Department  
2 of Environmental Health Sciences, I believe.

3 Q. Did John Spangler conduct a study in 1994  
4 similar to yours?

5 A. Right at the same time. He was doing one  
6 for 20/20.

7 Q. Was John Spangler an expert witness named by  
8 the plaintiffs in this case?

9 MR. ROSENBLATT: Judge, isn't this  
10 going far afield?

11 A. Yes, he was.

12 MR. COFER: It's not going far afield  
13 because you're claiming surprise.

14 THE COURT: I don't see how it has  
15 anything to do with anything.

16 MR. COFER: Your Honor, they are  
17 claiming surprise. Here's the point I want to make.

18 THE COURT: They are claiming surprise  
19 as far as she is concerned.

20 MR. COFER: But here's the deposition  
21 where they ask her. If you'll let me approach, I  
22 can show you where---

23 THE COURT: Show it to me, not to her.

24 MR. COFER: That's what I want to do.

25 MS. LUTHER: Your Honor, just for point

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1 of clarification, with respect to the survey issue  
2 at the beginning, she told Mr. Rosenblatt, in  
3 response to his question, he asked her if she had  
4 ever done a study comparing pre- and post-ban  
5 exposures.

6 THE COURT: Let's see what it's talking  
7 about here.

8 MR. COFER: That's the survey and then  
9 I'll show you the study when you're ready.

10 THE COURT: I want to see the study.  
11 I'm not interested in the survey.

12 MR. COFER: This is the survey. I'll  
13 show you the study if you'll allow me. She was  
14 asked about that here in the beginning, but that's  
15 the study.

16 THE COURT: So that's the ATA study  
17 that they're not at liberty to publish?

18 MR. COFER: That's right, Your Honor.  
19 There is a little more to the Spangler story that  
20 might add something.

21 THE COURT: I'm not interested in the  
22 Spangler story.

23 MS. ROSENBLATT: Your Honor, unless  
24 counsel has more questions---

25 MR. COFER: Can we excuse

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1 Dr. Janczewski while we continue this?

2 THE COURT: Okay. We have no other  
3 questions.

4 (The witness exits the courtroom.)

5 MS. ROSENBLATT: Your Honor, I think  
6 it's clear, you know, dealing with these issues  
7 separately, as to this survey which was  
8 mischaracterized as a study, it was nothing more  
9 than a survey, which is, according to the courts in  
10 Florida and throughout the country, this is not  
11 scientific evidence. This is speculative. There is  
12 no scientific basis for this. This would not be  
13 published in any kind of peer-reviewed journal, and  
14 she would certainly not be, in our opinion,  
15 appropriate for this witness to testify on purely  
16 speculative matters that clearly do not meet the  
17 Frye test. I mean, if there was a case that's a  
18 classic example, she is ready to render opinions  
19 about before or after the ban, and whether or not  
20 there are other reasons for these health problems,  
21 and under Section 702.3 of the Florida evidence  
22 code: "Subject of expert testimony, scientific  
23 reliability," if anything were not reliable  
24 scientifically, it's this witness' explanation of  
25 making a lot of phone calls to everyone other than

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1 the people involved.

2       There was not even an attempt, not even a  
3 minimal attempt to have some type of survey or paper  
4 filled out by flight attendants, and in 1994, three  
5 years after a nationwide class action is certified,  
6 and for whatever it's worth, the publicity  
7 throughout the country, including the New York  
8 Times, this lady apparently did a certain amount of  
9 research, she claims, but was totally unaware that  
10 flight attendants have brought a class action for  
11 diseases, for exposure in airplanes to secondhand  
12 smoke.

13       I mean, her credibility is really nill. How  
14 can anyone be investigating health impacts of  
15 contaminants on airplanes and somehow, with whatever  
16 investigation and phone calls she did for several  
17 months, she never learned of Broin, she never  
18 learned of this lawsuit, and she basically just made  
19 a bunch of phone calls and put together a lot of  
20 information that will clearly prejudice us, has very  
21 little probative value, and to read the rule: "An  
22 expert's opinion may not be speculation, must be  
23 based on reliable, scientific principles. If the  
24 expert opinion is not based on reliable, scientific  
25 principles, the opinion will not be admitted."

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1           And it clearly is not based on any  
2 scientific principles at all for an individual--she  
3 may have the Ph.D; she's done extensive work for the  
4 tobacco companies--to come into this courtroom and  
5 try to render an opinion that flight attendants  
6 complaints and problems have continued and gotten  
7 worse.

8           THE COURT: Let me hear from the  
9 defendants.

10          MR. COFER: Well, here's what I want to  
11 say. First of all, with respect to surveys, Frye  
12 tests not being scientific, they brought in  
13 Cummings. His whole testimony was a survey.

14          So let's start with that. You know, sauce  
15 for the goose, sauce for the gander.

16          This whole thing started out with "Judge,  
17 this is a horrible surprise. It wasn't in the  
18 deposition." I showed you where it was in the  
19 deposition.

20          John Spangler conducted a companion test,  
21 the same time that Janczewski did. He was their  
22 expert. After a deposition, they chose not to call  
23 him.

24          THE COURT: Don't even talk to me about  
25 it.

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1 MR. COFER: My point is it's not a  
2 surprise.

3 THE COURT: Okay.

4 MR. COFER: Here's the bottom line.  
5 Our evidence, our position is secondhand smoke on  
6 planes does not cause disease.

7 THE COURT: I understand your position  
8 and I understand everything that you are talking  
9 about.

10 My considered opinion, considering this as a  
11 Frye examination, I don't think she is qualified to  
12 make the statement she has made based upon her own  
13 testimony of how she conducted this alleged, quote,  
14 survey, because it's certainly not based on any  
15 scientific principles I know about by making phone  
16 calls to union leaders.

17 So, anything that's related to that, I  
18 think, is inadmissible.

19 If she did some studies in the sense of she  
20 took tests in an airline environment and did it  
21 under whatever conditions she said she did it in a  
22 scientific manner, that might be a different story.  
23 And whatever the results of those tests show based  
24 upon the quality of the air within the airline, that  
25 may be something that you may talk about.

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1 But the other business about whether or not  
2 complaints have increased or decreased, certainly  
3 she is not in any position --

4 MR. COFER: Your Honor, may I, Your  
5 Honor, try to lay a foundation with the witness?

6 THE COURT: I have already heard  
7 enough.

8 MR. COFER: But I haven't had an  
9 opportunity --

10 THE COURT: You haven't?

11 MR. COFER: We started out --

12 THE COURT: What have we been talking  
13 about for the last 20 minutes?

14 MR. COFER: Frankly, I'm responding  
15 to --

16 THE COURT: I listened to the lady  
17 testify as to what she did. It doesn't satisfy me.  
18 And I don't think there is any scientific basis for  
19 what she has done.

20 You have something else?

21 MR. DAVIDSON: Judge, I apologize for  
22 my speaking, but Mrs. Rosenblatt is flatly  
23 misstating the legal grounds for keeping  
24 Dr. Janczewski's testimony regarding her survey out.

25 I have three cases which stand squarely for

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1 the proposition that if the foundation is laid,  
2 which Mr. Cofer has not yet had the opportunity to  
3 do, that these types of surveys are regularly relied  
4 on by experts in this area, then the survey's  
5 results are admissible.

6 THE COURT: This kind of survey where  
7 you make telephone calls to somebody else based on  
8 hearsay is not.

9 I really don't want to get into it any more.

10 MR. DAVIDSON: But Judge, I have a case  
11 right on point. I have a telephone survey case  
12 where someone called up --

13 THE COURT: I am not satisfied that  
14 this is appropriate. Do you understand me?

15 Let's move on.

16 MR. COFER: Just so I don't run afoul  
17 with the court inadvertently or advertently, I won't  
18 mention the survey. Your ruling is the survey  
19 doesn't come in.

20 THE COURT: Whatever she is talking  
21 about, the changes and complaints and all of that,  
22 is out. She can testify as to whatever studies she  
23 did on the airline quality of air on the basis she  
24 said she went out and took samples of 38 flights or  
25 whatever. If that's what she wants to talk about,

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1 fine.

2 MR. COFER: Let me tell you one other  
3 area that I think is crucial that I think she is  
4 clearly qualified to discuss and I think it's very  
5 important and that is this whole issue of ASHRAE  
6 TC9.3, when it came into existence, why it came into  
7 existence, who is on it and quality control.

8 Now, part of what she will say is continuing  
9 concerns --

10 THE COURT: I still think we're getting  
11 off track of what this case is all about.

12 MR. COFER: Except, Your Honor, that  
13 our position is it doesn't cause it and, second,  
14 Your Honor, the second question certified by the  
15 Third DCA is if it does cause it, what's the amount,  
16 how much.

17 THE COURT: If it goes to that, I don't  
18 have any problem with that. That's what I told you  
19 in the beginning.

20 MR. COFER: So, I won't mention the  
21 survey.

22 MR. ROSENBLATT: Judge, if they bring  
23 in M.D.'s who say secondhand smoke doesn't cause  
24 disease, that's legitimate.

25 THE COURT: I know. We have already

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1 past that point.

2 MR. ROSENBLATT: Now, I don't know how  
3 long, you know --

4 THE COURT: Let's just do it.

5 MR. ROSENBLATT: Because I'm sure it  
6 will go after five.

7 MR. COFER: Your Honor --

8 THE COURT: I don't know. We'll bring  
9 her back tomorrow.

10 MR. COFER: We'll have her stay.

11 Your Honor, two things. I will, of course,  
12 want to make a proffer for the record as to what her  
13 testimony --

14 THE COURT: I don't want you to do it  
15 now because I don't want to waste the jury time.

16 MR. COFER: Okay. And second, so no  
17 one will get upset when they say this, anticipating  
18 that the Rosenblatts might have this concern since  
19 they raised it a few times, I have another time line  
20 prepared that doesn't have the post-ban complaints,  
21 so let's just look at that one and see if we have a  
22 problem.

23 THE COURT: I don't know what that one  
24 is. It looks the same to me.

25 MR. COFER: But what it does not have

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1 is the post-ban complaints.

2 MS. ROSENBLATT: In case you sustained  
3 our objection, he had another one made up.

4 THE COURT: Do you have small copies of  
5 those things?

6 MR. COFER: I do. I'm not sure that's  
7 the right one.

8 Obviously, this is imperative to rebut their  
9 argument about fraud.

10 THE COURT: What's the difference  
11 between any of these?

12 MR. COFER: Look at the far lower  
13 right. No post-ban complaints.

14 THE COURT: What does it purport to  
15 show then?

16 MR. COFER: Remember, this is a fraud  
17 case, as plaintiffs want to remind you, that we  
18 defrauded the public. It shows the history of cabin  
19 air quality, the regulation beginning in 1970, Ralph  
20 Nader's letter.

21 THE COURT: It shows the history of  
22 cabin air quality?

23 MR. COFER: The public issue of cabin  
24 air quality.

25 THE COURT: Wait a minute. Where does

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1 it say that?

2 MR. COFER: Well, she will testify to  
3 that. I'll say --

4 THE COURT: Smoking ban on flights  
5 under two hours, it shows a whole bunch of --

6 MR. COFER: It shows 1967, Ralph Nader  
7 writes FAA about banning smoking on aircraft.

8 THE COURT: Wait.

9 MR. COFER: To the far left. 1970, FAA  
10 advance notice of smoking regulations. 1971, the  
11 Surgeon General's office conducts a study which  
12 concludes, I might add, that smoking is not a  
13 problem on planes.

14 THE COURT: Wait a minute. I don't see  
15 -- maybe I have the wrong chart. It doesn't say  
16 that.

17 MR. COFER: Well, I didn't write it all  
18 on the chart. She will testify to that.

19 THE COURT: I see the chart here. I  
20 don't need the bigger one.

21 MR. COFER: I'm telling you what she  
22 will testify to.

23 THE COURT: In 1970, FAA advances a  
24 notice of smoking regulation. What does that mean  
25 as it relates to whether or not smoking causes

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1 cancer?

2 MR. COFER: Whether smoking should be  
3 banned on planes. The whole issue is the smoking  
4 ban. Why should smoking be banned on planes?  
5 Because people were making health complaints  
6 suggesting it might cause problems.

7 THE COURT: Cigar and pipe smoking  
8 banned in '84, four eighty-eight, whatever that  
9 means, smoking ban on flights -- this is just the  
10 ban, okay?

11 MR. COFER: Right.

12 THE COURT: So, now what?

13 MR. COFER: If you look, that will show  
14 all the studies where cabin air quality was a public  
15 issue from 1971 when the Surgeon General's office --

16 THE COURT: But it doesn't go to the  
17 issue we're talking about.

18 MR. COFER: Yes, it does, because the  
19 third question is did we defraud the public. Listen  
20 to what they say. They say they get to put on  
21 evidence saying that we are liars, we defrauded the  
22 public. We can't tell them we didn't lie, and we  
23 can't tell them it was a public issue.

24 THE COURT: Well, this chart, if it's  
25 just a time line of what happened, it doesn't say

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1 anything about the ultimate conclusion.

2 MR. COFER: Because it is a  
3 demonstrative aid.

4 THE COURT: They had discussions.  
5 Whether it was a two-hour ban or six-hour ban, it  
6 went on for years. So what?

7 MR. COFER: And the witness will  
8 testify that it was a public issue, hotly debated in  
9 the public forum from 1967 forward.

10 THE COURT: So?

11 MR. COFER: That goes to their fraud  
12 claim. They say we defrauded the public.

13 THE COURT: What's she going to say?

14 MR. COFER: I'm going to say:  
15 Dr. Janczewski, you did your study in '94 -- I won't  
16 say you did you survey.

17 THE COURT: Was she involved in all  
18 these studies?

19 MR. COFER: She was involved in the  
20 '94. She testified at congressional hearings. And  
21 as part of her '94 study, she reviewed all of these  
22 prior studies.

23 THE COURT: Okay, as far as it goes.

24 MS. ROSENBLATT: We would object to her  
25 being a conduit. You didn't permit our experts to

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1 testify and to go through --

2 THE COURT: She is going to testify --  
3 look, she is not going to testify about a scientific  
4 opinion expressed. If she is going to testify that  
5 they had these congressional hearings and one of the  
6 issues was whether to ban smoking, so be it. We  
7 have already had testimony about that. Get into it  
8 any deeper scientifically, she is not qualified.

9 MS. ROSENBLATT: She is not and not to  
10 say what occurred and what the result was because  
11 she is not qualified to do that either.

12 THE COURT: Let's go on. Okay.

13 MR. COFER: I better advise her of Your  
14 Honor's ruling so we don't have a problem.

15 (The witness entered the courtroom.)

16 THE COURT: Okay. Let's see if we can  
17 get this thing moving. Let's get the jury out here.

18 THE BAILIFF: Bringing in the jury.

19 (The jury entered the courtroom and the  
20 following proceedings were had:)

21 THE COURT: Okay. Let's proceed.

22 BY MR. COFER:

23 Q. Thank you, Your Honor. Dr. Janczewski,  
24 where we left off you had told the jury about your  
25 work history, your educational experience, and you

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1 mentioned indoor air quality. I want you to tell  
2 the jury briefly what is involved in study of indoor  
3 air quality, when it became an issue in the United  
4 States and why.

5 A. Indoor air quality, called IAQ, started  
6 becoming an issue in about the early 1980's. In the  
7 1970's, we were all under that energy crisis and  
8 everybody was told to seal up your homes, seal up  
9 your office buildings, put insulation and plastic on  
10 your windows, more insulation in your house, shut  
11 everything down tighter and tighter.

12 In fact, office buildings that were built  
13 after that time don't even have windows that open up  
14 anymore. So, what happened was we were trying to  
15 conserve energy by sealing off the buildings, trying  
16 to use less and less outside air, which isn't  
17 necessarily bad, but it certainly is less expensive.

18 If you take air here in Miami, you got to  
19 pull the moisture out of it because it's really  
20 humid. In the wintertime when you are up in New  
21 England and you bring air in a building, you have to  
22 heat it. It gets very, very expensive. You have to  
23 cool the air down here, so we tighten up the  
24 buildings.

25 We also have this big advent in the

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1 seventies of newer plastics, newer fabrics, newer  
2 types of carpeting, fabrics for office furniture,  
3 bigger copy machines, office equipment, putting on  
4 all sorts of pollutants out in the air.

5 Normally a building is designed or an  
6 environment can easily be designed to handle any  
7 pollutants you put in there until you start shutting  
8 it down. You shut it down and put more pollutants  
9 in, then we started seeing in the early eighties  
10 this rise in pollutant levels in indoor spaces and  
11 we started to see people get sick.

12 You have heard of sick building syndrome,  
13 building-related illness. That's what was  
14 happening. It was an indoor air quality problem.

15 So, what we do in the business is go out and  
16 investigate this problem, diagnose a sick building  
17 or an area that has a problem and recommend what to  
18 do to change the situation.

19 Q. Are your experiences in addressing sick  
20 building syndrome and building-related illness  
21 helpful in addressing airborne contaminants in other  
22 settings like planes or buses or trains?

23 A. Absolutely. No two environments are the  
24 same. Everything is unique. Whether you go to  
25 investigate a home or investigate a plane or it's

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1 the national zoo or it's a laboratory, everything is  
2 different, but you take the same basic skills, same  
3 basic equipment, same basic principles on sampling  
4 for contaminants, the same principles about  
5 threshold limit values or what levels you can be  
6 exposed, and then you can work in any type of unique  
7 environment.

8 Q. Dr. Janczewski, have you personally  
9 conducted IAQ, indoor air quality/sick building  
10 analysis?

11 A. Yes.

12 Q. Approximately how many?

13 A. Probably hundreds of times.

14 Q. Tell the jury, if you would, starting from  
15 the time the phone rings in your office how you go  
16 about assessing an indoor air quality complaint?

17 A. Well, typically somebody will call and say I  
18 can't breathe, there's bad air, we got a problem.

19 The first thing we like to do is to talk to  
20 the occupants that are having a problem. We could  
21 either do that from sending out a survey and asking  
22 them to keep track of their health complaints or  
23 actually sitting down and talking to the workers or  
24 the building occupants and find out what they are  
25 feeling and when they're feeling it.

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1           We are looking for trends, you know, do they  
2 have a headache, are they nauseous, are they tired,  
3 watery eyes, runny nose. Sometimes but not all  
4 times we can kind of tease out what might be the  
5 problem. For instance, if it is headache and  
6 nausea, not always but in most cases it's related to  
7 some chemical.

8           If it's watery eyes, runny nose, well,  
9 that's typically your pollen, your cat dander or  
10 some other type of allergic response. So, that  
11 helps kind of figure out what direction we're going  
12 in.

13           And then we want to know is it on a Monday  
14 or is it on a Friday. Office buildings usually shut  
15 down over the weekend. The first thing they do  
16 Monday morning is turn on the ventilation system.  
17 If the ventilation system is contaminated, it blows  
18 that contamination right into the building. So, we  
19 see that Monday morning illness thing.

20           Or is it towards the end of the week. Do  
21 the symptoms go away when the worker leaves the  
22 area. Is it more in the spring than it is in the  
23 fall or winter.

24           So, we're looking for trends. Sometimes  
25 these are long-term interviews or surveys and

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1 sometimes we have got an immediate problem that we  
2 can solve right away. Maybe there's been somebody  
3 putting pesticides in the night before.

4 We go through and try to tease out what  
5 direction we want to head in next. The next thing  
6 we do is look at the ventilating system because over  
7 75 percent of the time it is something wrong with  
8 the ventilation stem. Like I said, any ventilation  
9 system should be able to handle any kind of  
10 contaminant as long as it's designed properly and  
11 maintained properly.

12 But what we typically find is the  
13 ventilation system hasn't been designed for the  
14 space. Like new commercial office buildings are  
15 moving walls around all the time. One day you have  
16 an office that has an air vent that's supplying air,  
17 and the next day somebody puts a wall up and now one  
18 office has two and the other office has none. So,  
19 that happens.

20 Poorly maintained systems, that's a big  
21 problem. When a building owner needs to cut  
22 budgets, sometimes the first thing they cut is  
23 maintenance. So, we see outside where you have  
24 dampers that allow the outside air to come in the  
25 building, they have fallen down and rusted shut.

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1 Dampers that are in the ventilation system which are  
2 there to fall down in case of fire to keep the smoke  
3 from migrating, they fall down and are rusted in  
4 place and nobody even knows they're closed shut.

5 So, we look at the ventilation system  
6 because that's usually the culprit.

7 The very, very last thing we want to do is  
8 actually take air samples because air sampling is  
9 very expensive. Sometimes it doesn't tell us what  
10 we need to know but mostly because of the cost.

11 Q. Dr. Janczewski, has smoking been allowed in  
12 any of the buildings you have investigated?

13 A. In the past, no. I have done a lot of  
14 federal government work, so there isn't smoking in  
15 federal government buildings for a long time.

16 More recently we have gotten into it because  
17 we are doing a lot of work with restaurants and  
18 casinos, and that's actually what we're in there for  
19 is to help them design better smoking areas to  
20 accommodate smokers and nonsmokers. But most of the  
21 work we have done has been in no smoking buildings.

22 Q. You said in, I think, 70 or 75 percent of  
23 the time, the problem is with the ventilation  
24 system. To what extent does smoking contribute to  
25 indoor air quality problems?

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1       A.    In my experience and in everything that I  
2   have read, everybody in the industry agrees that  
3   smoking is associated probably with less than two  
4   percent of the problems that you see in indoor air  
5   quality, because the hundreds of buildings we have  
6   looked at, there's a typical example, we get called  
7   in and there isn't even any smoking in there.

8       Q.    Now, Dr. Janczewski, we have heard a lot of  
9   testimony in this case about recirculated air.  If  
10  you would, briefly tell the jury what is  
11  recirculated air and is it bad?

12      A.    That's a fallacy.  Everybody thinks  
13  recirculated air is bad.  That's where you bring air  
14  into a building or into a space and you keep reusing  
15  it over and over and over again.  Everybody thinks  
16  oh, well, recirculated, that must be bad.  Actually,  
17  to the contrary, recirculated air sometimes can be  
18  the best air.

19            When we need the cleanest air around, we  
20  depend on recirculated air.  Think about the space  
21  shuttle.  Where do you think those guys get their  
22  air from?  They have the same air being used over  
23  and over again.

24            How about a submarine?  They have no way to  
25  get outside air.  They are recirculating their air.

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1 Commercial office buildings recirculate a  
2 lot of their air. We certainly recirculate a  
3 tremendous amount of air in our houses, but we all  
4 live and breathe fine.

5 In the cleanest environments where we  
6 absolutely want sterile air like, say, an operating  
7 room or how about an operating room where you are  
8 doing deep bone surgery, if you get an infection in  
9 your skin, you can treat it with antibiotics. But  
10 if you get an infection in bone, you have a lot of  
11 trouble because we can't treat it with an  
12 antibiotic.

13 So, you want to make sure, if you are having  
14 deep bone surgery, that you are in a sterile room.  
15 They supply the air to orthopedic surgery rooms  
16 through recirculated air through high-efficiency  
17 particulate air filters, and those filters are  
18 designed to remove all of the infectious agents so  
19 you have got a sterile environment.

20 They use the same filters in the space  
21 shuttle, use the same filters when they make  
22 computer chips, microchips, you know, you see those  
23 people in those clean suits, white space suits  
24 making computer chips, those are clean rooms and  
25 those depend on recirculated air.

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1           We use recirculated air where we want the  
2 best control of it, but so it's not necessarily bad.  
3 The time that air gets bad is when ventilation  
4 systems are improperly designed and improperly  
5 maintained. You can have either all fresh air or  
6 all recirculated air and it's just fine as long as  
7 you design and maintain the system right.

8       Q.   Dr. Janczewski, we have heard testimony in  
9 this case comparing the exposures to secondhand  
10 smoke that flight attendants get on planes with the  
11 exposures to secondhand smoke that spouses get in  
12 homes.

13           Are homes different than planes?

14       A.   Absolutely. Every environment is unique.  
15 It's very dangerous to take data that you have  
16 collected in one environment and just apply it to  
17 another environment because everything is different.

18       Q.   Tell the jury how planes are different than  
19 other enclosed places.

20       A.   Think about some of the common sense stuff.  
21 Think about the occupant density where we have a lot  
22 of people crammed into a small aluminum tube. We  
23 don't usually see that except maybe a movie theater  
24 or church. Not an unusual environment but,  
25 nevertheless, not something we're in all day every

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1 day.

2 We have got a lot of people coming on board,  
3 liberating all of their contamination from their  
4 clothes to their biological contamination, all the  
5 stuff that we all insist on bringing on board  
6 because we don't want to check it in, and all of  
7 that is contamination. You have the food being  
8 served.

9 You have got outside issues that you don't  
10 have on the ground. You have cosmic radiation that  
11 is bombarding the plane. You have higher level of  
12 ozone than you see on the ground. You have no  
13 humidity. At 30,000 feet, there's no moisture in  
14 the air like there is on the ground.

15 But at the same time, there's no pollution  
16 like we have on the ground. You don't have the  
17 pollution off the cars and you don't have the pollen  
18 and you don't have all sorts of things that we  
19 normally get in the springtime.

20 You have got, like I said, indoor  
21 contaminants like cat dander. Anybody who owns a  
22 cat, if you sit on an aircraft seat, that will not  
23 come out of that fabric. Three years later we can  
24 test it and there's still cat dander there. But at  
25 the same time, you have one of the most

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1 sophisticatedly designed and maintained ventilation  
2 systems.

3       The amount of air that's changing over in an  
4 aircraft compared to our house is phenomenal. You  
5 got maybe in your house you get a complete change in  
6 the air once every three hours and, you know, you  
7 have got ten times higher when you are in an  
8 aircraft. So, you have got more air moving through  
9 there. You have got it moving through those same  
10 filters that we use in operating suites, those HEPA  
11 filters.

12       So, you have got a better designed system.  
13 You certainly got a better maintained system. And  
14 how many of us have changed that filter on our house  
15 air conditioning system in a long time? I haven't  
16 done it in ages. It doesn't clean anything really.  
17 Just kind of keeps all the squirrels and pigeons out  
18 of your air conditioning systems.

19       You have HEPA filters on planes. All you  
20 have are those little filters in your house.

21       They regularly maintain the aircraft  
22 ventilation system. We don't maintain our  
23 ventilation system at home like that.

24       It's better designed and designed for that  
25 space in an aircraft. Our home isn't necessarily

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1 designed very well for what we're living in.

2 So, there's a big difference and it's very  
3 dangerous to compare the two.

4 Q. Dr. Janczewski, you mentioned earlier you  
5 had conducted a measurement study on airplanes.  
6 When was it conducted?

7 A. 1994.

8 Q. And who retained your firm to conduct it?

9 A. The Air Transport Association.

10 Q. Tell the jury what the Air Transport  
11 Association is.

12 A. They're the trade association that  
13 represents all the major airlines: United, TWA,  
14 Continental, Delta. They're located in Washington,  
15 D.C. and they -- I think they're the only  
16 organization that represents the airlines.

17 Q. What did your study involve? What did you  
18 do?

19 A. They had called us in to respond to an  
20 increased number of complaints on board aircraft  
21 cabins about the air quality, and the airlines were  
22 concerned something is going on in their aircraft  
23 and they don't understand what it is. It seems to  
24 be getting worse. There seemed to be more  
25 complaints. So, they asked us whether or not we

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1 could go on board and actually run some samples and  
2 tests and see what we could find.

3 One of the things we did was we needed to go  
4 back and look at the old studies that were done too  
5 because they had discussed the old studies with us  
6 as well, said could you take a look at what was done  
7 and we did and thought what could we do better, do  
8 we have better scientific instruments we can use  
9 now, can we get better data, can we do something a  
10 lot better --

11 MR. ROSENBLATT: Objection, Judge. She  
12 is going way beyond the question.

13 THE COURT: I don't think so.  
14 Overruled.

15 BY MR. COFER:

16 Q. You may proceed, Doctor.

17 A. You asked me what we did. So, we designed  
18 the study, got the equipment, went on board 35  
19 flights, I believe, and tested the air and then came  
20 back and wrote a report for them.

21 Q. Let me stop you right there. You say you  
22 reviewed prior studies?

23 A. Right.

24 Q. You conducted sampling?

25 A. Right.

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1 Q. Did you review any congressional hearings or  
2 other information?

3 A. Yes. Anything we could find on the subject,  
4 congressional hearings, we talked to the airlines  
5 themselves, they were all there.

6 Q. Let me ask you this: The samples you took,  
7 the physical samples you took, did you take them on  
8 both domestic and international flights?

9 A. No, just domestic.

10 Q. When your study was done in 1994, was  
11 smoking allowed on domestic flights?

12 A. No.

13 Q. You took measurements on how many flights?

14 A. 35, I believe.

15 Q. And what type of aircraft?

16 A. We did two newer generation and two older  
17 generation aircraft. The older generation -- I  
18 always mix this up every time somebody asks me  
19 because we are doing other airline studies right now  
20 so I get confused.

21 Q. You had some that were a hundred percent  
22 fresh air and some that were circulated air?

23 A. Circulated air, right.

24 Q. Have you prepared a chart which would help  
25 you explain to the jury what you did and what you

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1 measured?

2 A. What we took measurements of, yes.

3 Q. Would that assist the jury in understanding  
4 what you measured?

5 A. I think so.

6 Q. Does it fairly and accurately depict what  
7 you measured and what you did?

8 A. Yes.

9 MR. COFER: Your Honor?

10 THE COURT: Okay.

11 MR. COFER: With Your Honor's  
12 permission, could the doctor step down?

13 THE COURT: Certainly.

14 BY MR. COFER:

15 Q. These are the things we sample for which  
16 really aren't much different than what we have done  
17 in other studies with the exception, of course, we  
18 weren't studying environmental tobacco smoke, so  
19 there were a couple things we left out. But mostly  
20 we tried to stay pretty similar to other studies.

21 We looked at total suspended particulates.  
22 You know when you see a ray of sunlight coming  
23 through the window and there's all these particles  
24 floating in the air? That's what we're looking at,  
25 particles. We had big, huge particles. We had

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1 little, tiny particles that you can't see.

2 There's a range of particles in there. The  
3 big ones you breathe in, they get caught in your  
4 nose hairs and they never get to your lungs.

5 The little tiny, teeny, tiny ones you  
6 breathe in, they hit your lungs and breathe them  
7 back out again. But there's a range right in the  
8 middle that you breathe in and they stay in your  
9 lungs, and those are known as respirable  
10 particulate.

11 So, a lot of times you will see studies that  
12 will do RSP's instead of TSP's. We looked at the  
13 TSP's because we are interested in those bigger  
14 particles as well, those things that get in your  
15 eyes and make your eyes water, so we had total  
16 suspended particulates.

17 Q. Carbon dioxide, is it a good indicator of  
18 ventilation rates?

19 A. Yes, it is.

20 Q. Is ventilation important?

21 A. Ventilation is everything.

22 Q. Why?

23 A. Without ventilation, we can't remove  
24 pollutants. Without ventilation, we're not  
25 comfortable. We don't have the right temperature.

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1 We don't have the right humidity. We have a basic  
2 understanding, in indoor air quality, what carbon  
3 dioxide levels are comfortable for people. What are  
4 good levels that indicate to us that we're getting  
5 enough ventilation, we're getting enough air  
6 exchange rates.

7 So, carbon dioxide doesn't become a health  
8 threat. You know, we all breathe in oxygen and then  
9 breathe out carbon dioxide and the plants take in  
10 the carbon dioxide and put out oxygen. So, it's not  
11 something that's going to kill you unless it gets to  
12 really high levels like when you breathe in a  
13 plastic bag and that's all you are breathing. But  
14 we don't see dangerous levels in these environments,  
15 but we test for it to give us an idea of the  
16 ventilation rates.

17 Q. What are volatile organic compounds and why  
18 do you test for those?

19 A. Those are types of chemicals we're looking  
20 for. We're looking for those chemicals that are  
21 volatile. They have a lot of pressure. They want  
22 to evaporate in the air. Nail polish, nail polish  
23 remover, gasoline, those things that the minute you  
24 pour it on the ground, you are going to smell it  
25 because it's got a high vapor pressure, it's very

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1 volatile and wants to get in the air as opposed to  
2 if you break a thermometer, and the mercury is on  
3 the ground, you know how it won't evaporate? That  
4 doesn't have a high vapor pressure.

5         So, we're concerned about those things we  
6 are getting in the air because that's what you  
7 breathe.

8         Q. How do volatile organic compounds get in air  
9 cabins in the first place? What are the sources?

10        A. I talked earlier about how in every indoor  
11 environment you get contaminants. You get dry  
12 cleaning fluid coming off your clothes, the  
13 carpeting, the fabrics, people bringing things on  
14 board, the food, the alcohol, everything on board is  
15 putting off chemicals. Every environment we're in,  
16 you are getting exposed to these things.

17        Q. Now, microbials, what are they and what did  
18 you find?

19        A. Microbials are your biological organisms,  
20 the bacteria, the fungus, the mold, the cat dander,  
21 the pollen, those things that make your eyes water  
22 and nose run.

23        Q. Why did you test temperature, relative  
24 humidity and noise?

25        A. These are more comfort factors. They're not

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1 contaminants, what we call environmental factors.  
2 We knew the ranges that we should be in or that the  
3 airline manufacturers, the aircraft manufacturers  
4 specified for the aircraft, so we wanted to see if  
5 it was in that range and whether or not it was a  
6 comfortable environment.

7 Q. You can return to the witness stand.

8 The question is, what were the conclusions  
9 of your study?

10 A. We didn't find anything on that list -- CO2,  
11 carbon dioxide levels were a little high. They  
12 weren't a health threat and they weren't unexpected  
13 because when you put a lot of people in a room, like  
14 this room, your CO2 levels go up. But everything  
15 else was well below any recommended threshold limit.

16 Remember those limits that we feel are  
17 dangerous? Everything was well below that. There  
18 was nothing that we could really tie to health  
19 effects or the complaints that we were getting, and  
20 it was all -- we had the same numbers that everybody  
21 else did. Even though we had more sophisticated  
22 equipment this time, lo and behold, we got the same  
23 numbers. We're seeing the same thing. There really  
24 isn't a lot of anything there.

25 Q. How did the measurements taken on planes

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1 that had a hundred percent fresh air compare with  
2 the measurement taken on planes with recirculated  
3 air?

4 Were there significant differences?

5 A. There were no significant differences.  
6 Nothing that would make you believe that aircraft  
7 configuration really made a difference.

8 There were things we expected. For  
9 instance, humidity was a little higher in the  
10 recirculated. So, it's a little more comfortable,  
11 not as dry. But at the same time, the CO2 was a  
12 little higher because you are recirculating 50  
13 percent of the air in there. But there really  
14 wasn't much of a difference between the two.

15 Q. How were the results of your study reported?

16 A. We put it out in a document, in a book, a  
17 spiral bound book that ATA released, and it's  
18 available through the ATA if anybody wants it.

19 Q. Did you also testify before Congress about  
20 the results of your study?

21 A. Shortly after that I testified at the  
22 congressional hearings.

23 Q. Now, you told us earlier that in addition to  
24 taking your own samples that you just described for  
25 the jury, that you reviewed the past studies on

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1 cabin air quality.

2 What did those studies sample?

3 A. The same things except for a lot of them,  
4 the older studies were looking at --

5 MR. ROSENBLATT: Excuse me, Your Honor.  
6 Based on your previous ruling, we object.

7 MR. COFER: Let's approach sidebar.  
8 (Counsel and the court reporter  
9 approached the bench, and the following  
10 discussion was held outside the hearing  
11 of the jury:)

12 MS. ROSENBLATT: Could we state our  
13 objection and then you can respond? We would object  
14 because what she is doing now is basically being  
15 used as a conduit to explain her version of what  
16 occurred in old studies which she did, fine, but now  
17 she is talking about what other people did, what  
18 they concluded and there's no mechanism, no  
19 exception for the hearsay rule.

20 Basically she is using and she is talking  
21 about other studies and in this case that's  
22 inadmissible. Other studies can be used for cross  
23 examination, but she cannot simply start talking  
24 about other studies and what they found.

25 MR. COFER: I would agree with

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1 Mrs. Rosenblatt if I asked her questions from  
2 precise specific studies. I'm asking her her  
3 opinion comparing the results of the studies, and  
4 what she will say is they are generally the same.

5 Clearly an expert can rely on hearsay or any  
6 sort of information to form his or her opinion if  
7 the person is qualified. What the person cannot do  
8 under Florida law, unlike federal law, is admit  
9 inadmissible evidence through an expert.

10 In other words, they can't quote from and  
11 use as a conduit the hearsay. I'm not doing that.  
12 What I'm going to ask is you reviewed the past  
13 studies, what did they measure, how did the results  
14 compare, and she will say they are essentially the  
15 same.

16 MS. ROSENBLATT: She has already said  
17 that.

18 THE COURT: No, this was a different  
19 study. Which studies is she going to be talking  
20 about?

21 MR. COFER: She is comparing her '94  
22 study with the prior studies. What I want to ask  
23 her is how did the results of her study in '94  
24 compare generally with the prior studies. All the  
25 studies preceded hers.

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1 MR. ROSENBLATT: ETS?

2 MR. COFER: Yes, 1971, all the studies.  
3 But let me tell you what I'm not doing.

4 THE COURT: The difference being, of  
5 course, the methodology that was used, collecting  
6 the samples, the scientific operation. She even  
7 talked about we have better methods of collection  
8 and all of that sort of thing and detection.

9 MR. COFER: I can lay that foundation.

10 MS. ROSENBLATT: I think he can bring  
11 in someone to testify as to particular studies,  
12 people that did it, or he can try to introduce the  
13 studies.

14 THE COURT: She can testify that  
15 essentially they're the same result, but that's  
16 about as far as she can go.

17 MS. ROSENBLATT: Not what the other  
18 studies found or anything.

19 THE COURT: No.

20 MR. COFER: I'm just going to say how  
21 did the prior studies -- how did the results of your  
22 study compare.

23 THE COURT: She has already said that,  
24 but as it relates to these past studies.

25 MS. ROSENBLATT: Without getting into

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1 them.

2 (The following proceedings were held  
3 within the hearing of the jury:)

4 BY MR. COFER:

5 Q. Where I think we were, Dr. Janczewski, is  
6 you just told the jury about your 1994 study that  
7 you conducted. You told us that you had also  
8 reviewed the prior studies in terms of preparation  
9 for your 1994 study you conducted.

10 What did those prior studies measure?

11 A. A lot of the same things, and then a lot of  
12 the prior studies were looking at smoking --

13 MR. ROSENBLATT: Excuse me, Your Honor.  
14 That's exactly contrary to the sidebar.

15 THE COURT: Sustain the objection. I  
16 think the question was different at the sidebar.

17 MR. COFER: I didn't intend for it to  
18 be, so I'll ask the ultimate question.

19 BY MR. COFER:

20 Q. Your 1994 study, were you able to compare  
21 the findings of your study to the prior studies?

22 A. Yes.

23 Q. And what were the results generally?

24 A. Generally the same. The numbers were the  
25 same. We were just missing RSP's, which I talked

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1 about earlier, and nicotine. So, we couldn't  
2 compare that, but everything else was comparable.

3 Q. On your studies, were what you measured  
4 below these PEL's and these TLV's, these levels,  
5 these ceilings that you have discussed?

6 A. Correct.

7 Q. The prior studies, what they measured, were  
8 they also below these PEL's and TLV's that you  
9 discussed?

10 A. Yes.

11 Q. Now, the prior studies, not your studies,  
12 they were conducted when smoking was permitted on  
13 planes, right?

14 A. Correct.

15 MR. ROSENBLATT: Objection, Your Honor.

16 MR. COFER: I haven't even asked the  
17 question.

18 THE COURT: I don't know where he's  
19 going, but that question is all right. Overruled.

20 BY MR. COFER:

21 Q. Here's my question: Did those prior studies  
22 take measurements in smoking sections on planes and  
23 measurements in nonsmoking sections on planes?

24 A. Yes.

25 MS. ROSENBLATT: We would object, Your

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1 Honor, because I think your ruling was very limited  
2 in terms of the scope.

3 THE COURT: That's within the  
4 limitation. Overruled.  
5 BY MR. COFER:

6 Q. And my question on that is how did the  
7 measurements taken in the smoking sections on planes  
8 compare with the measurements taken in the  
9 nonsmoking sections on planes?

10 MS. ROSENBLATT: We would have the same  
11 objection, Your Honor. That's getting into the  
12 studies themselves, which I don't think is  
13 appropriate.

14 THE COURT: I think we can talk about  
15 it in very general terms, whether they did or did  
16 not compare.

17 THE WITNESS: In general, the  
18 numbers --

19 THE COURT: Without specifics.

20 THE WITNESS: -- were higher in the  
21 smoking section than the nonsmoking section, but  
22 both smoking and nonsmoking were way below any  
23 threshold value.

24 BY MR. COFER:

25 Q. Again, let's stay general. Did they look at

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1 measurements in nonsmoking sections of planes where  
2 smoking was permitted?

3 A. Right.

4 Q. So, you have planes where smoking was  
5 permitted, the nonsmoking sections.

6 THE COURT: Now we're getting deeper  
7 and deeper into it.

8 MR. COFER: Let me come over and  
9 explain to you where I'm going. It's a general  
10 question, and I think it is well within Your Honor's  
11 ruling.

12 THE COURT: Do you want to talk about  
13 it?

14 MR. COFER: Either that or I'd like to  
15 ask the question. Why don't I ask the question and  
16 then we can talk about it if necessary?

17 THE COURT: I don't want to do that.  
18 Based upon what we have already discussed, if you  
19 are going outside the parameters of that, then we  
20 better discuss it.

21 MR. COFER: I don't think we are, but  
22 you know --

23 THE COURT: Let's find out.  
24 (Counsel and the court reporter  
25 approached the bench, and the following

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1 discussion was held outside the hearing  
2 of the jury:)

3 MR. COFER: I am trying to be very  
4 careful not to -- here's what I'm asking: Did the  
5 studies compare measurements on planes that didn't  
6 allow smoking at all with measurements on planes  
7 that allowed smoking in the nonsmoking section, and  
8 she will say yes. And I'll say, how do those  
9 measurements compare, and she will say, essentially  
10 the same.

11 Let me tell you why this is germane and why  
12 this is important. Plaintiffs have represented that  
13 regardless of where you sit on a plane, whether it  
14 is the smoking section or nonsmoking section, that  
15 you were forced to breathe all this secondhand  
16 smoke. That's not what the studies say. She  
17 clearly has the expertise. She has reviewed it.

18 In fact, in his opening statement,  
19 Mr. Rosenblatt said, and I think it is the -- I can  
20 get the exact quote -- flight attendants were on  
21 planes where you couldn't open windows, there was no  
22 fresh air and there was just recirculation.

23 Testimony again -- and you will notice today  
24 I asked Mrs. Laxinetta if a flight attendant worked  
25 at his own zone or coach, did you have to go --

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1 essentially what this testimony will do is lay the  
2 foundation for exposures that were very different in  
3 the smoking sections of planes from the nonsmoking  
4 section.

5 It's an issue in the case, and she is  
6 qualified, and I'm just going to ask her that bottom  
7 line without getting into all the studies.

8 THE COURT: Well, see, the problem is  
9 you are again comparing one to the other and,  
10 basically, that's not what's supposed to be done  
11 because supposing they were different?

12 She can testify as to her results.

13 MR. COFER: But see, the --

14 THE COURT: The other testimony is  
15 already in evidence.

16 MR. COFER: Except it's just from  
17 plaintiffs' perspective. What plaintiff said was if  
18 you look at the dose, it's the same regardless of  
19 where they were. That's not what the studies say.  
20 And let me tell you how I'm hamstrung.

21 THE COURT: How is she going to say it  
22 was the same?

23 MR. COFER: I'm going to say: Did you  
24 look at the studies where they took the  
25 measurements?

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1 She will say sure.

2 And did they look at the same things?

3 Sure.

4 Did you compare the measurements that were  
5 taken on planes where no smoking was permitted at  
6 all?

7 Yes.

8 Where measurements were taken in the  
9 nonsmoking sections of planes where smoking was  
10 permitted?

11 And she will say yes.

12 How did those compare?

13 THE COURT: No, let's not get into  
14 comparisons. Why don't you just tell what she did  
15 and later you can, if you want to bring in somebody  
16 else on the other ones, they can testify about that  
17 because what you are doing is you are getting in the  
18 results of the other tests.

19 MS. ROSENBLATT: Exactly.

20 MR. COFER: Let me say that's what  
21 experts can do.

22 MS. ROSENBLATT: No.

23 THE COURT: Not really.

24 MR. COFER: Experts certainly can rely  
25 on information outside the court, and I can grab the

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1 Rules of Evidence.

2 THE COURT: What you are actually doing  
3 is you are comparing this study with that study and  
4 comparing what the results are.

5 MS. ROSENBLATT: And bolstering the  
6 testimony through references to other studies either  
7 through comparison or otherwise, which flatly  
8 violates the rule and there is a recent case where  
9 it is error to permit that.

10 THE COURT: I think we have gone far  
11 enough.

12 MR. COFER: One more thing before we  
13 finish that. The way it works is I cannot bolster  
14 my witness's testimony by using --

15 THE COURT: Basically you're doing it.

16 MR. COFER: No, I'm not. What I can do  
17 is ask her her opinion and then they can choose on  
18 cross examination to bring in the study. Remember  
19 that's what they did in the plaintiffs' case.

20 THE COURT: I understand that, but you  
21 can't bolster her report.

22 MR. COFER: I'm not. Here's what  
23 you --

24 THE COURT: What do you think the  
25 difference is?

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1 MR. COFER: Because I'm not saying is  
2 your study hunky-dory, did you do a great study.  
3 What I want to do is this is back when smoking was  
4 on planes. They took measurements in smoking  
5 sections. They took measurements in nonsmoking  
6 sections. How do the measurements in nonsmoking  
7 sections compare with measurements on planes where  
8 smoking wasn't even allowed.

9 MS. ROSENBLATT: But she didn't do  
10 those studies.

11 MR. COFER: But she is an expert. She  
12 reviewed them. 90 point -- come back here.

13 90.704 --

14 THE COURT: What I'm trying to do is  
15 trying to avoid getting into the content of the  
16 other studies. That's the point.

17 MR. COFER: I'm not going to get into  
18 it.

19 THE COURT: If you are saying I found  
20 it would be 1.2 and how did that compare with the  
21 other one that found 1.2, it is comparable, but if  
22 you say it is comparable, what difference does it  
23 make --

24 MR. COFER: As plaintiffs always said  
25 in their case, I'm just getting into it a little.

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1 THE COURT: Not for the truth of the  
2 matter.  
3 MR. COFER: But it is clearly relevant.  
4 MS. ROSENBLATT: And the judge always  
5 sustained it.  
6 THE COURT: Not always.  
7 MR. COFER: Here is where I'm  
8 hamstrung.  
9 THE COURT: How far are you going?  
10 MR. COFER: One question and I'll stop.  
11 MS. ROSENBLATT: He's gone very far.  
12 MR. COFER: One question and I'll stop.  
13 MR. ROSENBLATT: Wait. While we're up  
14 here, how much longer are you going to be, about?  
15 THE COURT: We'll cross tomorrow.  
16 MR. COFER: I'll stop after this  
17 question. I want to finish.  
18 MR. HARDY: The reason I came up here  
19 is I wanted to suggest that, in view of the fact  
20 that we're saving cross until tomorrow, I don't  
21 think we ought to have to conclude the direct of  
22 this witness because we're going to make a proffer  
23 in the morning and offer proof based upon the prior  
24 court's ruling.  
25 MR. COFER: You know what? This is a  
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1 great ending point. I'll ask her this question.

2 MR. HARDY: We just want to make a  
3 proffer before the cross starts. That's all.

4 MR. COFER: I'll ask her this question  
5 and get the answer and we'll quit for the day.

6 (The following proceedings were held  
7 within the hearing of the jury:)

8 BY MR. COFER:

9 Q. All right. Based on the review of these  
10 studies, tell me how the measurements taken in the  
11 nonsmoking sections of smoking planes compared with  
12 the measurements taken on planes that didn't allow  
13 smoking at all?

14 A. They were the same.

15 MR. COFER: That's it. Stop for the  
16 day. It's a convenient stopping point. I'm not  
17 through with you yet, but I am for the day.

18 THE COURT: All right. Rather than get  
19 into something a little more inclusive, I guess we  
20 can stop today and pick it up tomorrow morning.  
21 Unless we have other matters to take up prior to the  
22 beginning of the session, we'll meet at nine with  
23 the jury.

24 MR. COFER: Your Honor, there was a  
25 proffer we wanted to make first.

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1 THE COURT: How long is that going to  
2 take?  
3 MR. COFER: Probably not more than 15  
4 minutes.  
5 THE COURT: 9:30. You be here at 9:30.  
6 You be here at nine. Okay.  
7 (The jury exited the courtroom.)  
8 THE COURT: Over the evening you must  
9 not discuss this matter with anybody including the  
10 lawyers, and I don't think it would be appropriate  
11 to review any prior testimony of anything of that  
12 nature. Just forget about it until tomorrow and  
13 then you will come back and do whatever it is you  
14 have to do.  
15 We'll be in recess until tomorrow at nine  
16 o'clock.  
17 MR. MOSS: Your Honor, can we raise an  
18 issue?  
19 THE COURT: All right. Do you want to  
20 go outside, please?  
21 (The witness exited the courtroom.)  
22 MR. HARDY: I just wanted to inquire  
23 about the Friday investiture issue because I didn't  
24 know what you found out.  
25 THE COURT: What I found out is I  
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1 didn't find a place to have court, so I think we'll  
2 have to be off Friday.

3 MR. ROSENBLATT: We're going to have to  
4 be off Friday? That's all right with me.

5 MR. COFER: I'd like you to tell the  
6 jury it is the plaintiffs' fault.

7 MS. ROSENBLATT: We have all those file  
8 cabinets.

9 MR. MOSS: There's simply no courtroom?

10 THE COURT: None that are available  
11 that I know of. The only thing I could do at this  
12 point, if we do find one, is -- I have an  
13 appointment in the afternoon. We could have a  
14 morning session, if we can get by with that, if I  
15 can find a place to hold it.

16 MS. ROSENBLATT: I would vote for  
17 Friday off since I have to finish all those memos by  
18 Monday anyway.

19 MR. HARDY: If we don't have the  
20 afternoon, then I vote we take Friday off too. We  
21 don't want to end up in a situation where we end up  
22 with part of a witness.

23 MR. MOSS: Our preference is we have  
24 all day but, obviously, if Your Honor has an  
25 appointment in the afternoon --

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1 THE COURT: Well, I can't really do it  
2 all day.

3 MR. MOSS: I'm not asking for that.

4 THE COURT: Okay.

5 MR. COFER: Thank you.

6 (Court was adjourned at 4:50 p.m.)

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